United States Court of Appeals

for the Second Circuit

APPENDIX

Nos. 74-1584, 74-1636

In the

United States Court of Appeals

For the Second Circuit

SCIENTIFIC HOLDING COMPANY, LTD, AN ILLINOIS CORPORATION,

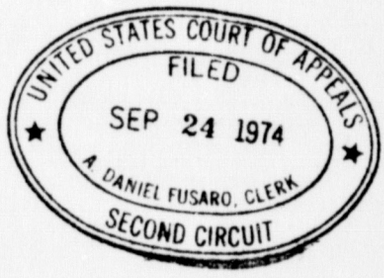
Plaintiff-Appellant,

vs.

PLESSEY INCORPORATED, A DELAWARE CORPORATION,

Defendant-Appellee.

APPENDIX.
Volume III (Pages 851-1310)



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TABLE OF CONTENTS

	PAGE
Docket Entries in the District Court	1-7
Complaint	7-44
Answer	45-95
Answer to Counterclaims	96-102
Judgment	103
Notice of Appeal	104
Bill of Costs	105-106
Plaintiff's Objection to Bill of Costs	107-109
Amended Bill of Costs	110-111
Notice of Cross-Appeal	112
Transcript of Proceedings	113
Opening Statements	114-171
Plaintiff's Witnesses:	
Edward Allan Kovar - Direct Examination	172-202, 1311-1315
Cross Examination	203-530, 738-835
Redirect Examination	836-851
Recross Examination	851
Raymond N. Carlen - Direct Examination	531-553
Cross Examination	554-616
Redirect Examination	617-618
Recross Examination	619-630

	PAGE
Julius Lewis -	
Direct Examination	631-647
Cross Examination	648-725
Redirect Examination	726-729
Harold D. Shapiro -	
Direct Examination	730-738
William H. Tucker -	
Direct Examination	852-919
Cross Examination	920-1039
Redirect Examination	1040-1041
Warren J. Sinsheimer -	
Direct Examination	1041-1123
Cross Examination	1123-1179
Redirect Examination	1180-1195
Donald Clarke -	
Direct Examination	1195-1283
Cross Examination	1283-1304
Redirect Examination	1304-1309
Recross Examination	1310
Colloquy In Chambers	1316-1331
Keith P. Jones -	
Direct Examination	1338-1367
Cross Examination	1368-1385
Redirect Examination	1386-1390
Recross Examination	1390

	PAGE
Defendant's Witnesses:	
Seth Dubin -	
Direct Examination	1390-1430
Cross Examination	1430-1436
Dale Osborn -	
Direct Examination	1501-1511
Cross Examination	1511-1514
Constantine Vangelakos -	
Direct Examination	1515-1527
Cross Examination	1527-1530
Redirect Examination	1530-1531
David Gretton -	
Direct Examination	1437-1500, 1531-1598
Cross Examination	1598-1625
Redirect Examination	1626-1639
Recross Examination	1639-1644
Andrew D. Ballantyne -	
Direct Examination	1645-1660
Cross Examination	1661-1669
Milton H. Albert -	
Direct Examination	1670-1709
Cross Examination	1710-1740
Redirect Examination	1740-1742
Peter D. Hewitt -	
Direct Examination	1746-1756
Cross Examination	1756-1762

	PAGE
Edward Allan Kovar - Direct Examination	1763-1791
Colloquy In Chambers	1792-1902
Charge Of Court	1903-1940
Verdict Of Jury	1940-1945

be provided to Plessey. Do you recall whether or not at the time of the signing of the February 4th agreement such a statement had been provided?

A It had not.

MR. McCONNELL: That is all I have, your Honor.

RECROSS EXAMINATION

BY MR. MALONEY:

Q In May, Mr. Kovar, you had two and a half million dolars in back orders and you showed only 1,300,000 on your memorandum of May 26th, Defendant's Exhibit AH. By my calculation that would mean that you had back orders of a 1,200,000 that were not to be delivered until after January 1, 1971? Is that correct?

A That is what those figures would indicate, yes, sir.

MR. MALONEY: I have no further questions.

THE COURT: Thank you, Mr. Kovar. You are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MR. McCONNELL: Mr. Tucker, please.

W I L L I A M H. T U C K E R, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. McCONNELL:

Q Will you state your name, Mr. Tucker?

A William H. Tucker.

Q Where do you live?

A At 1018 Derwydd Lane, Berwyn, Pennsylvania.

Q What has been your education?

A I have a Bachelor's degree in engineering from MIT. I have done all the work for a Master's in business administration from SMU, except for the thesis.

Q When did you first become associated with the plaintiff company, its predecessor, ISL?

A In February, 1968.

Q Before that what had been your employment?

A I had worked for eight years for a Litton Division of Litton Industries.

Q What is that division, Mr. Tucker?

A It is a manufacturer of electronic rotary components.

Q Prior to that?

A I was five years with Texas Instruments in engineering and manufacture.

Q Prior to that?

A I was an engineer for four years with the United

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Aircraft Corporation.

Q Coming again to 1968, what was your connection with ISL?

A I was hired as national sales manager.

THE COURT: What were you doing at that time when you first became associated with ISL? What was your business at that particular time?

THE WITNESS: I was a manufacturers' representative.

THE COURT: That was your business? And how long had you been a manufacturers' representative?

THE WITNESS: For three years.

THE COURT: And how many customers did you have about that time?

THE WITNESS:I had four lines.

THE COURT: Four lines? So these people, ISL, came to you, and it was negotiation whether you would add that line? I don't know? Is that correct?

THE WITNESS: Yes, you could say that.

MR. McCONNELL: But I think he then dropped the other lines.

THE COURT: That may be, but I wanted to find out what he was at the time, so I understand.

Q What were the other lines?

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THE COURT: I don't care about the other lines. I want to know what he was doing at the time and what the association was, so the jury could understand it.

Q What other manufacturers were you representing at the time that you made this connection with ISL?

A One of my lines was a company called Aircraft Mechanics in Colorado Springs. They had a core memory operation locally. They wanted to establish an overseas plant, and I took their president on a survey of the Caribbean islands in order to see which was the most attractive, and when we got to Barbados we met Mr. Van Bellingham, and that is how I got to know ISL.

I was subsequently asked if I would be national marketing representative for ISL, and I accepted.

Q Now, when you became national marketing representative did you continue these other lines that you were representing?

A No, I turned them over to an associate.

THE COURT: Did you have a company that you were doing business as?

THE WITNESS: As Tucker Associates.

THE COURT: Tucker Associates?

THE WITNESS: Yes.

THE COURT: What was said? A partnership?

THE WITNESS: At that time it was myself and an assistant.

THE COURT: So, when you began working exclusively for ISL, Tucker Associates still had these lines?

THE WITNESS: No, I turned them over.

THE COURT: To somebody outside of Tucker Associates?

THE WITNESS: Yes, I turned them over to another manufacturers' representative.

Q Can you describe the sales representative for us that ISL had at that time when you became national marketing representative?

A Yes.

Q Will you do so, please?

A We had V.J. Huntoon Associates in the Boston area covering New England at that time.

Q At that time? Have you added some since?

A We had Grey Electronics in the Chicago area, John Grey covering the midwest. We had Leddy Associates in San Francisco; we had Jewett Company, Sam Jewett, for southern California and Los Angeles; we had Ken Norvell Associates in Dallas covering the southwest.

Q What was your responsibility or duties as the national marketing representative for ISL?

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A To supervise and direct the regional representatives, to appoint others in areas where we had no representation, to promote the company, get new customers, get sales, make sales forecasts, and contribute as I might from the marketing point of view to the management.

Q Now, in addition to overall responsibility for the sales representatives, did you have any direct selling responsibility?

A Yes, I did.

Q What was that?

A That was for those regions where we did not

b3 have a regional representative.

Q Did you later as representatives in addition to those that you mentioned?

A Yes, we did.

Q Who were those and where?

A Travco Associates on Long Island, to cover New York and northern New Jersey, and Swanson Associates in Phoenix to cover the Phoenix area, New Mexico and Arizona, and B and A Associates, who I mentioned previously, to cover the mid-Atlantic area; they are in Philadelphia.

Q Do you happen to recall what ISL's sales were for the years 1968 and 1969, respectively?

A No, I am not sure.

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Q Well, it's not important.

A I think 1969 was a little over 400,000.

THE COURT: Your recollection isn't clear? If you had some figures you could tell.

Q In 1969, December of 1969, who were the principal customers that ISL was doing business with?

A Hewlett Packard in California, Honeywell, Magnavox, Nuclear Chicago, Nuclear Data.

Q Are all these companies in the computer or peripheral industry?

A Yes. Standard Memories, Standard Logic.

Q What were the products that you were selling or attempting to sell to this industry or these customers?

A There were three main product lines. There were the core memories; there was sub-assembly work, which would be the adding of components to printed circuit boards.

Q Is that called sometimes PC board stuffing?

A Yes, in the slang that is stuffing, and cable harness assemblies.

THE COURT: I didn't hear the last.

THE WITNESS: Cable harness assemblies was the third item.

Q What is cable harness assembly work?

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A It is the bundling together of many individual insulated wires, usually each of a different color for coding purposes,and then this will branch off of the main stem, like a tree, at various points on both ends. The purpose of the cable harness is to interconnect the printed circuit boards in an electronic assembly.

Q And what were the core memory products you were marketing?

A The core memory products were essentially core planes and core stacks.

Q Will you explain the difference between a plane and a stack?

A If you take two or more planes and you stack them up, that is a stack.

Q Can you explain a plane to us? We have had one description, but maybe another would help.

THE COURT: What happened to that toy you had the other day?

MR. McCONNELL: I had a big black box, but somebody locked the box and I don't have the key. Maybe there is somebody could pick a lock around here.

THE COURT: I thought the jury would see it.

Q Do the best you can with it. Explain a plane.

A A core plane consists of a printed circuit board

upon which natural ferrite cores, little donuts, are mounted in a very oddly matrix type manner, and then wires are inserted through the rows and columns of these cores in order to be able to dress them. Usually, there is a third wire which is strung in a given patch or bit as a sense wire.

Q I show you what has been identified as Plaintiff's Exhibit 55 and ask you if you can identify that.

A That is the bookings forecast for the 12 months starting June 1, 1970, which I made up for Mr. Kovar.

MR. MALONEY: I believe that is already in evidence as Defendant's Exhibit CJ, your Honor.

MR. McCONNELL: Right. It is the same exhibit. I would like to offer it.

THE COURT: If you want to offer your own copy you are entitled to do that, sure.

MR. MALONEY: No objection.

xx (Plaintiff's Exhibit 55 received in evidence.)

Q Did you say that you prepared that, Mr. Tucker?

A Yes, sir.

Q And on what information would you have prepared that?

A Well, it would be based on the marketing information from the sales representatives for their

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respective regions and prepared directly by myself for those areas that I was covering directly, such as Canada and Florida, where we did not have a regional representative, and it would be flavored and modified by my best judgment at the time.

Q Well, at the time you prepared this document did you believe the bookings forecast shown to be realistic and attainable?

A Yes, I did.

Q And the date of this forecast is --

A June 1, 1970.

Q And it is for what period forward?

A The following 12 months.

Q The bookings forecast that you show is what figure?

A $3,618,000.

Q Out of potential sales of what?

A $8,070,000.

Q Now, I believe it has been established that Plessey assumed management on or about June 9, 1970. After that to whom did you report in the Plessey organization?

A Mr. Frank Parr.

Q As you understood it, what was Parr's

responsibility?

A He was marketing manager.

THE COURT: Do you know for what? Marketing manager for what?

THE WITNESS: For Plessey ISL.

THE COURT: Plessey ISL? The Barbados operation?

THE WITNESS: Yes, sir.

THE COURT: For the United States market?

THE WITNESS: Yes.

THE COURT: And did you have to go to Parr for pricing authority?

THE WITNESS: Yes, I did.

THE COURT: Where was Parr?

THE WITNESS: He was on Long Island initially, starting in late April, and then he moved from Long Island up to Maynard, Massachusetts, outside of Boston.

THE COURT: When did your first report go to Mr. Parr?

THE WITNESS: Oh, initially it was the first week of June.

THE COURT: The first week of June?

THE WITNESS: Yes.

THE COURT: And by that time had he gone up to Maynard, Massachusetts?

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THE WITNESS: No.

THE COURT: He was still on Long Island?

THE WITNESS: Yes.

Q Do you recall when the Maynard facility opened or the Boston facility opened and when he moved?

A I believe he moved up in July.

THE COURT: How would you contact Mr. Parr? You lived in Berwyn at that time?

THE WITNESS: Yes, sir.

THE COURT: Is that Philadelphia?

b4 THE WITNESS: Philadelphia.

THE COURT: What did you do? Go and see him in Long Island?

THE WITNESS: I saw him on Long Island. I traveled a good deal. I saw him on Long Island. Sometimes we would go together and see a customer. We had many customers in the Boston area, many potential customers. I would see him many, many times there, and we talked by telephone.

Q Was it your practice to prepare weekly marketing reports ?

A Yes, it was.

Q Had that practice started before the Plessey takeover?

A Yes, sir.

Q Did it continue afterwards?

A Yes, it did.

Q After the takeover to whom did you send those reports?

A I sent one copy to Mr. Parr and I sent the other copy to Peter Hewitt at that time, who was then the manager of the Barbados plant, and I sent a copy to each of my regional representatives for their files.

Q Was Hewitt later replaced?

A Yes.

Q By whom?

A Mr. Dave Gretton.

Q After Gretton assumed Hewitt's position did the reports then go to Gretton?

A That is correct.

Q As well as Parr?

A Yes.

Q And what type of information would you report on these weekly reports?

A We had a standard format. The first category was orders received. The second category was quotes requested; the third category was activities, which was either pertinent information, or sometimes just news of

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what was happening at a particular customer.

Q Was that broken down both by customer and sales representatives?

A Yes, each regional man contributed each week as to the activities in his region.

Q I show you what has been marked Plaintiffs Exhibit 50, which is a group of exhibits, and ask you if you can identify that.

A These are copies of the weekly marketing report that I just described starting with the week of June 20, 1970, and running consecutively through March 27, 1971.

MR. MALONEY: Your Honor, at this point I am a little confused, because on Plaintiff's exhibit list describing the market reports I don't think he has included all of the reports. I may be mistaken.

MR. McCONNELL: That is true.

THE COURT: You mean he left out some of the weeks?

MR. McCONNELL: That is right.

THE COURT: Why did he do that?

MR. McCONNELL: I am happy to offer them all. What I am trying to establish are the ones that I am offering.

THE COURT: Well, the others are available and

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I will let the defendant put in what others they want.

MR. McCONNELL: I offer Plaintiff's Exhibit 50 in evidence at this time.

MR. MALONEY: I would object on the ground I think we should take each report one at a time and admit only those portions as to which Mr. Tucket has personal knowledge. I think based on the description he has given of the reports we have hearsay upon hearsay.

MR. McCONNELL: These come in under the shopbook concept, your Honor.

THE COURT: You say copies of each of these reports went to Plessey, the people in Barbados?

THE WITNESS: Yes.

MR. MALONEY: The portions from the other sales representatives are just what they told Mr. Tucker.

THE COURT: I understand that. I will receive them as business records. It all goes to the weight of it.

xx (Plaintiff's Exhibit 50 received in evidence.)

Q Now, are these core planes and stacks shelf items or standard items?

A No.

Q Well, are they made to customer specification?

A Yes.

Q Would you explain the sequence, how you go about

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obtaining a production order from a particular customer?

THE COURT: Can you answer that question? Customers are different.

THE WITNESS: No, I can answer that, your Honor.

THE COURT: Go ahead.

A Assuming that this is a new customer with whom you have not done business, you will have to essentially do two things: one, prove technical capability; secondly, be competitive on price.

Now, in proving any technical capability, that you have the right numbers and types of people engineering-wise and in the shop to do the job or to build at the rate that the customer wants it; you have the shop capacity; you have the engineering capability.

This is often true by building a prototype sample, which if you can sell that to the customer fine; if you can't, if it is of large enough potential, you usually will be happy to build him one at no charge, and he sticks that into his computer, and if it plays, you have proven your capability.

Then it is a matter of successfully bidding and capturing the order.

Q Are you familiar with the term request for quotation?

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A Yes, I am.

Q And what does that mean?

A It means a request for quotation comes from the potential customer, asking you to quote a quantity of a certain type of core memory.

Q Now, after the takeover and after you were reporting to Parr, to whom would you send those requests for quotations?

A To Mr. Parr.

Q And for what purpose?

A For the purpose of getting pricing.

Q Did you at any time after June, 1970, experience any difficulty getting your requests for quotations acted upon?

THE COURT: I will sustain the objection to that question. Don't ask him what his difficulties were. Ask him what happened.

Q Well, what would Parr do when he got one of your requests for quotations?

A I believe he would initially, in the early months, he would send it to Barbados for engineering to look over; later on when engineering was moved to Maynard, Massachusetts, he would perform the entire function of technical review of the specification and cost estimate it

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and the pricing, but in either event the pricing came from him.

Q Well, how long normally would it take you to get a request for quotation acted on by Mr. Parr?

A It was averaging four to six weeks.

Q Did that cause you any problems with the customers?

A Yes, it did.

Q Can you give me any specific examples where that was a problem and in that connection do you want to refer to Plaintiff's Exhibit 50.

MR. MALONEY: Perhaps Mr. McConnell can suggest a particular week and a particular customer. Mr. Tucker can find it a lot more quickly. Exhibit 50 has a few more reports.

THE COURT: I will let Mr. Tucker look at it. After all, he is telling us about his difficulties. I think the question is by looking at that do you remember any particular item in which you were delayed.

THE WITNESS: Yes. For example, in the June 20th report a company called BIT, Business Information Technology.

THE COURT: June 20th being the first report?

THE WITNESS: Yes, sir, under quotes requested. And then July 25th, page 2, about six lines up from the

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bottom, is BIT awaiting quote.

THE COURT: You got BIT Natick. What does that mean?

THE WITNESS: It is the town of Natick, Massachusetts.

THE COURT: What is BIT?

THE WITNESS: Business Information Technology, which was abbreviated BIT.

THE COURT: And what was Business Information Technology?

THE WITNESS: A small company that was manufacturing what they call a mini computer.

THE COURT: This is where Parr was?

THE WITNESS: No, sir. This happens to be another suburb. It happens to be in suburban Boston also.

THE COURT: Perhaps this would be a good occasion to take a break for lunch. That will give Mr. Tucker perhaps a chance to look at this and give more answers to the question.

We will resume at 2 o'clock, ladies and gentlemen. The sun is out today; you may want a few minutes in the sun.

(Luncheon recess)

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rgh 1 Tucker-direct

AFTERNOON SESSION

2 P.M.

(Jury present)

W I L L I A M T U C K E R, resumed.

THE COURT: Good afternoon, ladies and gentlemen.

You may proceed, McConnell.

DIRECT EXAMINATION CONTINUED

BY MR. McCONNELL:

Q Mr. Tucker, do you recall any other instances where you had a delay in getting a request for quotation acted on?

A Yes, I do.

Q Would you give us those?

A A customer called Imlac.

Q Where are they located?

A They are also in the Boston area.

Q Is that a computer company or what?

A It's part of the computer industry. They make what are called intelligent terminals.

Q When was the request for quotation made in the case of Imlac and when was it responded to?

A The week of May 23rd and we still did not have an answer the week of July 25th.

Q Did you ever receive a response to that request

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

for quotation?

A Yes, we did.

Q When?

A I would say earlyAugust.

Q Do you recall any other instances?

A There was Honeywell in Framingham.

Q When was the request for quote and when was it acted on?

A The week of June 6th, and again by the week of July 25th we had not gotten an answer.

Q Do you recall when you did receive that response?

A I believe that was also -- I think that was in August, yes.

Q Do you recall any others?

A A customer called Digital Products.

Q Where are they located, sir?

A They are in California.

Q When was the request for quotation?

A The week of June 13th.

Q When was that acted on?

A The week of September 19th.

Q And the others?

A There was a company called Custom Computer.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Where are they located?

A They are on Long Island. They requested a quote the week of July 11th and we were still awaiting the answer the week of August 28th. There was a customer called Information Controls. They are in the Los Angeles area. They requested a quotation the week of August 8th and we still had no answer by the week of September 19th.

Q Any others that you recall?

A There was a second request from Imlac, the company which I mentioned previously, in the week of November 28th. We were still waiting on March 6, 1971.

Q Any others?

A Then there was a company called Varian Associates.

THE COURT: What was the name of it?

THE WITNESS: Varian Associates.

A Also in the Los Angeles area. They requested a quotation on July 13, 1971, during a visit there. I had Mr. Frank Parr with me, as a matter of fact. They still had not received a quotation by May 8th.

Q Of 1971?

A Of 1971.

Q After the measuring year?

A We had not substituted.

Q I think you said July 13, 1971. Did you mean 1970?

A January 13th. Excuse me, January 13, 1971, May 8, 1971.

Q To erase the confusion I put on the record, in the case of Varian, the request for quotation was in January of 1971?

A Yes, sir.

Q It had not been acted upon when, or when was it acted on?

A It had not been acted on the week of May 8th.

Q Would you follow up in any way on these requests for quotations where you didn't get a response back?

A On a weekly basis.

Q How would that follow up be done?

A Usually by telephone. Sometimes when I was with Mr. Parr.

Q Taking the period after the takeover and Parr had pricing authority, did you have any situations where the price you got back from Parr was not competitive or higher than the market price?

THE COURT: Would you reframe that question? I think it's a little confusing. Would you reframe that?

MR. McCONNELL: I will try.

Q Would you, from time to time, get feedback--

THE COURT: Let's go back. Parr would quote a price; is that right?

THE WITNESS: Yes, sir.

THE COURT: I take it what he wants to know is did Parr quote prices that you found were not competitive.

THE WITNESS: Yes, he did.

Q Can you give us any instances of that situation?

A There was a case of a company called Technology Marketing.

Q Where are they located?

A They are also in the Los Angeles area. They asked us for a rather large quotation, up to 10,000 memories of one type, up to 2,000 memories of the other.

MR. MALONEY: Your Honor, could I have an identification of the memories to which he is referring because this will be important in my cross-examination.

THE COURT: All right.

MR.McCONNELL: And if referred to in one of your market reports, give us the date of that market report.

THE COURT: All right, fine.

A During the week ending July 11, 1970, Technology Marketing requested that we quote quantities from 500 pieces up to 10,000 pieces of a 4K x 16 stack, together

with a quantity of 500 pieces to 2,000 pieces of a 2K x 16 stack.

Q Do you recall what the price was that you got back from Mr. Parr?

A It was .8 cents per bit.

Q .8 of a cent?

A .8 of a cent per bit.

Q And a bit is a core?

A A bit is a core.

Q Do you know what competition was quoting at that time?

A Yes. They were quoting .6.

Q How did you know that?

A I knew it from Bob Lowry and George Wells, who are the president and vice president of Technology Marketing, who informally told me what it would take to get the job. I also knew it from other industry inputs.

Q When you requested a quotation from Parr for Technology Marketing, did you tell him what the competition was charging?

A Yes, I did.

Q Did you ever have a conversation with Parr as to why he was quoting .8 cents a bit when you said it would take .6 cents a bit?

THE COURT: He didn't say anything like that.

MR. McCONNELL: All right, he said what competition was charge.

THE COURT: Did you ask Parr why it was .8 when you were told that the competition was .6?

THE WITNESS: We had numerous conversations. This was a continuing argument.

Q Did Parr give you any explanation as to why he was charging the prices he was charging?

THE COURT: He wasn't charging.

Q The prices he was quoting.

A He told me that he couldn't believe that the United States market was that low.

THE COURT: Was that low?

THE WITNESS: Was that low.

Q Did he tell you anything else?

A He told me that he had his profit margins to maintain, and he told me that he had his instructions.

THE COURT: Just as a matter of interest, what nationality is Mr. Parr?

THE WITNESS: He is a Britisher.

THE COURT: He is British?

THE WITNESS: An Englishman.

Q To your knowledge, had Mr. Parr had any prior

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

experience with memories?

A Not with memories, no.

Q I mean prior to becoming affiliated with Plessey-ISL?

A Not with memories. I believe he had experience in the computer industry in that he had sold peripheral equipment, punchcard equipment.

Q Did you get the Technology Marketing order?

A No.

Q What was the potential size of that order?

A Well, if we just take the 4K x 16 alone and forget the smaller memory, the 2K x 16, the going unit price at .6 would have been about $408.

Q How many units were they asking you to quote on?

A They were asking us to quote on 10,000, but it could have been divided --

Q Between several suppliers?

A Between two suppliers, or possibly three, but if we had gotten a quarter of that, which is a conservative I think way to look at it, we would have had 2,500 pieces at $400, which is $1,000,000.

b2

Q Do you recall any other instances where the prices Parr gave you were not competitive?

A Yes. Back at Honeywell in Framingham, Massachusetts.

There was a rather large buy there. There was a quantity of 3,000 of a memory that was in size 4K x 18.

MR. MALONEY: Could we get a date on this, please?

THE COURT: Yes, sure.

A The weekly marketing report of January 9, 1971. There were 11 vendors, 11 companies quoted on this job. We were the highest of the 11 according to the purchasing agent, Eleanor Smith, Mrs. Eleanor Smith.

Q Do you recall what you quoted on that job?

A This was a job in which Honeywell furnished certain of the material. We quoted .6 and it went for just under .4.

THE COURT: Do you remember who got it?

Do you remember who was the successful bidder?

THE WITNESS: I believe a company on the west coast called Ampex.

THE COURT: Did they manufacture these things in the United States or offshore?

THE WITNESS: Offshore, sir.

THE COURT: Offshore. Do you know where they manufactured these things?

THE WITNESS: They manufacture in Hong Kong.

THE COURT: Hong Kong.

Q Was the price you bid the price that Parr had

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

given you?

A Yes.

Q Did you make any adjustment to that price?

A Yes, I did. At the time that I visited Mrs. Smith, the buyer, to talk this over with her and with the director of purchasing, Bob Ray, I -- after being told that we were 50 per cent high -- in fact, we were highest out of the 11 bidders. In order to try to keep us in contention, because Honeywell was our second most important customer when you consider other Honeywell locations, I cut the price.

Q What did you cut it to?

A I cut it then and there verbally to about .5. I tried to move halfway between where I knew was competition and where we were in order to get us a second chance.

Q Did you tell Parr what you had done?

A I could not get ahold of him at that time. I was face to face with the customer. So, I acted on my own and I did this, and then I told him as soon as I could.

Q What, if anything, did Parr say when you told him that you had reduced the price that he had given you?

A He reprimanded me severely. He said that I had no authority to alter a price which he had given. He wrote me a letter about it, as a matter of fact.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you recall any other instances where the price that--

MR. MALONEY: Your Honor, before we leave this, can we have a unit price? I have a little trouble with .4s, .5s and .6s.

THE COURT: Your quote was .6; is that right?

THE WITNESS: Yes. A unit price would be-- excuse me, a unit price would be $300.

MR. MALONEY: At .6?

THE WITNESS: At .4, I believe.

MR. MALONEY: .4 is the $300?

THE COURT: I thought the .4 was the Hong Kong.

THE WITNESS: The .4 was competitive.

MR. MALONEY: What was the unit price that ISL quoted at .6?

THE WITNESS: Well, it would be roughly $450. In other words, wewere 50 per cent higher here. It went for $300, so conservatively speaking, assuming that we had gotten one-third of the 3,000 pieces that were to be placed, which is a reasonable assumption with Honeywell already a customer, we in effect lost $300,000 of bookings. At the going price, in other words, we lost $300,000.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T2

Q Do you recall any other instances where the price Parr gave you to quote was not competitive?

A At Standard Memories in Los Angeles. As noted in my weekly marketing report of June 27, 1970, we were asked to quote 200 pieces and 500 pieces of a 4K x 18 stack. In fact, this is a quotation from the purchasing agent at Standard Memories, if I may read it:

"Absolutely no way to do business at 1 cent .9 cents for 200 and 500. Present market is between .6 and .7 and Standard Memories is now paying .61."

Here was one of our original customers --

MR. MALONEY: Are you reading now from one of your weekly reports or from some letter?

THE WITNESS: No, I read it from that weekly report that I mentioned.

MR. MALONEY: 6/24/70?

THE WITNESS: 6/27/70.

MR. MALONEY: Thank you.

Q All right, go ahead -- let me interrupt. Did you report that information that you had from Standard Memories to Parr when you asked him for a quote?

A Yes, he received a copy of every one of these. This is the customer's feedback to our quotation.

op2 Tucker-direct

The business had not been lost yet. All you had to do when the customer says, "I am now paying .61," he is almost asking you to come in and say .60 and I'll give you a purchase order because Standard Memories was one of our original customers, one of our oldest customers.

Q What did you bid on that job?

A We didn't requote. We stood pat.

Q What was the potential order at .6?

A Well, again being conservative, taking the lower of the two quantities, if I'd take the 200 pieces, instead of the 500, at a unit price of $525 each, I have $105,000 out the window.

Q How do you get get to that unit price?

MR. MALONEY: Excuse me, your Honor.

Q Can you give us that?

THE COURT: I don't think the jury should pay any attention to "out the window."

MR. McCONNELL: We can strike "out the window."

THE WITNESS: Excuse me, lost.

THE COURT: You wouldn't have that order, but you are not saying that if you had that order, are you, and had quoted at that price that it would follow that Barbados would have made any money on that order, are you?

THE WITNESS: No, sir; I am not trying to speak

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to that at all.

THE COURT: That is right. I just want the jury to understand that. It was just that you say that Parr's quotes were non-competitive?

MR. MALONEY: Excuse me, your Honor, that wasn't the point of my objection.

THE COURT: I am not worrying about your point. I was just worrying about my point.

MR. MALONEY: Excuse me. I am getting confused with the .6. I thought Mr.Tucker said that we quoted .6 for a 4K x 18 on Honeywell, that would be $450 for the unit and, if I understood him correctly now, he sayd 4K x 18 at .6 for Standard Memories would be $525 a unit. I am not sure of the relationship.

THE COURT: On cross-examination you could ask him that if it causes you any trouble.

Q For all of us, would you explain how you get the unit price?

A You take the number of bits in the memory and you multiply it by the .6 cents or the .7 cents or whatever it is.

Q And the 525, was it?

A Yes, $525.

Q Represented .6 times the number of bits?

op4 Tucker-direct

A Yes.

Q In the unit that you were talking about, is that it?

A Yes.

THE COURT: Did you want to answer him?

THE WITNESS: If I may.

THE COURT: Yes, go ahead.

THE WITNESS: I tried to mention, when we were talking about Honeywell /Framingham, that there was some customer furnished material and I believe that is why there is a differencein price.

MR. McCONNELL: Okay.

Q Do you recall any other instances where the prices you got back from Parr were not competitive?

A A company called Weismantel.

Q Where are they located?

A They are in Minneapolis. They asked us to quote a hundred units of a memory that was of size 32K x 20.

Q Whenwas this?

A They requested the quote on July 11th, the week of July 11th, 1970. We quoted, I believe, in October.

Q All right.

A We quoted $1600 each. We were told by our

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

friends in Minneapolis that our competitor, Dataram, down at Princeton, New Jersey, had quoted $1175.

Q Did you tell Parr that?

A I did.

THE COURT: Do you know where Dataram would manufacture these things?

THE WITNESS: They string in the Island of Trinidad and in the Philippines.

THE COURT: The jury and I are getting a very geographical lesson out of all of this. Trinidad and the Philippines.

THE WITNESS: No one strings in the U.S.

THE COURT: Maybe we are lucky.

Q What was the potential order in the case of Weismantel?

A Well, they placed a hundred pieces with Dataram at $1175 because we did not budge from our $1600 position, although we had time to go back. Mr. Parr said no, so the value of the order was a hundred pieces at the going price of $1175 or $117,500.

Q Do you recall any other instances where the prices you got back from Parr were not competitive?

A There were other cases, but in those cases there were cases where I was able to prevail upon him to change.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, after Plessey assumed management of ISL, taking the balance of the measuring year, did you experience any difficulties or problems with getting timely delivery of the product to the customer?

A Yes, we did.

Q Will you give me some instances of that?

A We had a prototype order earlier from Varian Associates in Los Angeles. As reported for the week ending August 22, 1970, Varian cancelled the prototype for the 8K x 18 sized memory and cancelled the pilot run of 10 units, which was to follow, of course, for a cancellation of 27,800 and, as noted in the 8/22 report, the above cancellation had no charges due to prototype quality and delivery.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T3

Q But I thought you said earlier that you had a request for quotations from the same customer, Varian, later in January, 1971?

A Yes.

Q How did that come about?

A We prevailed on them. It took us, I guess, eight months to prevail on them to give us a second chance. We also had an improved design to offer to them in January.

Q At that time had you submitted two further proposals to Varian?

A Yes, we had. Mr. Parr and I took a trip through the west, as a matter of fact, I believe it was January 13, 1971. We called on Varian, saw their purchasing agent, and we talked with their engineers, and we had prepared and submitted to them a technical proposal which would solve some of the problems that had been experienced previously. The proposal was well received, and, as I mentioned before, they asked us for a price proposal.

Q That was the price proposal that you didn't get? Is that the one?

A I believe it is.

Q Did you write a report of that trip, do you recall?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I am sure I wrote a trip report, yes, sir.

Q I show you what has been identified as Plaintiff's Exhibit 51 and ask you if you can identify that document.

A Yes. This is the trip report for the trip that I was describing.

MR. McCONNELL: I offer Plaintiff's Exhibit 51 in evidence.

MR. MALONEY: We have no objection to the piece of paper, but do not admit to the accuracy of the contents.

THE COURT: I will receive the exhibit.

xx (Plaintiff's Exhibit 51 received in evidence.)

Q Do you recall any other instances where you had either delivery or quality problems with customers after June of 1970?

THE COURT: I can't follow that question unless you are asking him about untimely delivery and quality.

Q Is there a relationship between the two?

A Yes, I believe there would be. If you build it right, you only build it once. If you don't build it right, you have to keep rebuilding it, and this takes time. So if you have poor quality, you are almost invariably late on delivery.

Q Well, do you recall other instances where you had either a problem with late delivery or poor quality,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and if it is both, indicate that; if it is one or the other, indicate that.

A Yes, our largest customer, Hewlett Packard starting with the July 11, 1970, report -- may I read this --

Q Go ahead.

A Hewlett Packard becoming desperate 4K x 17 30 mill stacks. Arrival of first planes from Lisbon should be the beginning of relief of this 8 weekend situation. ISL is single source.

THE COURT: What does that mean?

THE WITNESS: Excuse me. That is on another subject. It is the same customer. It is another subject.

Q Who were the suppliers of Hewlett Packard, if you know?

A There were two; there was ourselves, and then they also did this themselves in house.

Q Their own stringing?

A Yes.

Q In house? In the United States or somewhere else?

A I believe in Hong Kong -- Singapore, excuse me.

Q What percentage of the requirements were you supplying or ISL?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A We had been given two-thirds initially. We had been told that the thousand piece order, thousand piece letter of intent, represented two-thirds of their requirements.

THE COURT: What were they doing, building up a facility in Hong Kong?

THE WITNESS: I believe so -- no, they had that already.

THE COURT: They had it already?

THE WITNESS: Yes.

Q Well, did the delivery problem with Hewlett Packard clear up?

A No, it continued.

Q Do you report on that in your reports?

A I do, progressively.

MR. MALONEY: Can we have the dates, your Honor?

Q Can you give us the dates of those reports and can you summarize briefly what the story was there?

A The next report would be for the week ending August 8, 1970.

Their AK x 17 30 mill line is stopped due to ISL quality and delivery. The current reject rate is 33 per cent. There are 15 computers on their final assembly floor without memories. We are sole outside source.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Since we had them hung up between the 30 mill stack and the switchover to the 22 mill stack, they probably will be forced to release the remaining 150 units of 30 mill stacks under the 500-unit agreement, and if they did they want 20 units per week in 30 mill and 30 units per week in 22 mill.

Q Do you know whether or not those anticipated delivery schedules were met?

A I don't believe they were.

Q Do you have any further reports on the Hewlett Packard delivery problem?

A In the September 5, 1970, report, 30 mill line is down again.

THE COURT: What does that mean, it is down again?

THE WITNESS: Meaning their line of computers that uses our 30 mill stack is stopped because there are no memories. Carl Steel, who is the purchasing agent, demands written delivery schedule.

Next, in the week of October 24th, two-thirds of the AK x 17 22 mill work is now being done in house due to ISL foot dragging.

Q So that you have gone from two-thirds to one-third? Is that it?

A Yes.

b2

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you have some further report on the Hewlett Packard situation after the short week ending 1-3-71?

MR. MALONEY: I think Mr. Tucker may have missed one, December 12, 1970.

THE WITNESS: Which one?

MR. MALONEY: December 12th, on page 2, Hewlett Packard.

Maybe you don't have that one. Maybe that is not one that Mr. McConnell offered in evidence. Why don't you read from my copy?

MR. McCONNELL: Why don't you save that for your examination?

THE COURT: Let him do it.

MR. McCONNELL: Let me show what you showed him. All right.

THE WITNESS: Let me read 12-5 first to keep it in sequence.

MR. MALONEY: All right.

THE WITNESS: The 30 mill program as threatened so many times in the past is now essentially over. This is the basis for their refusal to accept any more 30 mill stacks after December 23rd, except for repairs, of course. George White gave new schedule verbally- he is one of our people - but it has not been received here as written

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

confirmation. Please also include repair schedule. On 22 mill we are now third source, but the better we perform the more future business we can get. The next release will be January or February.

Q Do you want to go to the next one Mr. Maloney gave you?

A Yes, December 12, 1970. Hewlett Packard is pleased with our 22 mill program now as to quality and delivery. If we continue to do well it could be increased to 10 or 15 per week in April or May. Hewlett Packard asks if we will have this capacity by then.

On the 30 mill program Carl Steele appears to have week end on 12-23 cutoff date. He nows asks for our January shipping schedule, repairs included, and he expects us to complete the order. He also wants to know what we are doing to replace the six pieces scrapped this week.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you want to go to your next report on that subject?

THE COURT: For the week ended January 16th, is that the one?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: On January 11th we visited Hewlett Packard and met with their key people -- may I read this?

THE COURT: Go ahead.

THE WITNESS: General discussion of our poor quality and delivery 22 mill and 30 mill, which we countered by description of our new organizational setup.

THE COURT: What was that?

THE WITNESS: It was really talk with a sales flavor describing our new tightened quality control organization.

THE COURT: What do you mean by the tightened quality control organization?

THE WITNESS: Well, how we had instituted better procedures on the floor and we had, I believe, a new man.

THE COURT: Quality controls on the manufacture in Barbados?

THE WITNESS: Yes.

Q Did you complete reading your comment?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A However, this visit revealed we had lost about $100,000 of bookings in 1970 due to our poor performance. Following information was requested and furnished the following day.

THE COURT: By the way, was Mr. Parr with you at this meeting?

THE WITNESS: Yes, sir.

THE COURT: And who was Mike Boyce?

THE WITNESS: Mike Boyce was an engineer in our engineering department.

THE COURT: Boston?

THE WITNESS: In Boston.

THE COURT: He worked for Frank Parr?

THE WITNESS: Yes, sir.

Later in the week, January 14th, we were still in the San Francisco area. Hewlett Packard decided to give us the chance again to perform ourselves. We got the verbal go ahead on the first 60 pieces of the 22 mill stack and we expect to capture the second 60 shortly.

Q Do you recall any other instances where you had problems meeting delivery schedules or quality standards after June of 1970?

A At Nuclear Chicago, which was another old customer.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q What was the problem there?

A Essentially of poor quality and delivery. We had been sole source with them, which meant that we could get premium prices as long as we continued to reduce prices with successive orders. But we also, in effect, stopped theirproduction lines, and they called in our competitor, Dataram, and they gave them orders, pilot orders for each of the three memory types that we were building for Nuclear Chicago. The effect of this was we suddenly had competition where we had none before.

MR. MALONEY: Could we have some dates for this?

THE COURT: All right.

THE WITNESS: In the report for the week ended January 23, 1971, Nuclear Chicago, the above orders taken at premium prices, but Nuclear Chicago insisted upon a second source and Datarama got 15 units. If we had gotten prototype in by November 15th and had not serious quality and delivery problems in production we would still be sole source.

Q Can you recall any other instances of either delivery or quality problems after June of 1970?

A Standard Logic, a customer in the Los Angeles area, whom we had done business with for a number of years.

Q What was the problem there, sir?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Starting with the June 20, 1970, report, and delivery schedule recovery crucial to further orders.

In the September 12th report, Standard Logic unhappy with ISL quality. Had 20 stacks for return.

And, finally, in the October 10, 1970, report, Standard Logic claims 40 per cent reject rate; returned 23 units two weeks ago, 8 more units last week. Says she cannot afford to do business with us any longer on the 4K x 8.

b3

Q Were there any other accounts with which you experienced either problems in delivery or problems in quality after January, 1970?

A Mohawk Data Sciences.

Q What was the problem there and can you give us a date?

A On April 11, 1970, they requested prototypes, 220 x 16 memory. We built these prototypes three times. They rejected them twice, sending them back. They told us the absolute deadline was July 31st.

Q Deadline for what?

A For delivering these, to get qualified to deliver these three prototype stacks. Roger Trick, the purchasing agent up there, had personally told me -- I was there-- that he had set aside 300, a quantity of 300 units waiting

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

for us to qualify, and I believe he had told us to go ahead and buy the hardware for a thousand units. When we finally delivered these prototypes it was October 10th, and he had been forced by the passage of time to take the 300 that he had set aside for us and give it to the other vendor.

Q What did that potential order of 300 represent in terms of dollar sales?

A Well, since he had told us to go ahead with the hardware, I believe the quantity was a thousand. I looked upon it as a loss of a thousand units at $82 each.

Q Which would be?

A $82,000.

Q I believe you testified earlier that in addition to memory core planes and stacks, ISL was also doing cable harness assembly work and electronics sub-assembly work? Is that correct?

A Yes.

Q Did that continue after the takeover of June?

A Yes.

Q For how long?

A For a brief period.

THE COURT: What do you mean by a brief period?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Do you remember how long?

THE WITNESS: I would have to look up the exact date.

MR. MALONEY: I think we will stipulate we decided somewhere in mid-July we would not take any more cable harness orders.

THE WITNESS: I was informed by Mr. Parr in mid-July that the cable harness work was to be transferred to the Plessey Sao Paolo, Brazil, plant, and that we were not to accept any more orders at the Barbados plant.

Q Did he say anything with respect to the assembly work?

A And the same was true for the assembly work.

THE COURT: The same was true for what?

THE WITNESS: The assembly work, PC board stuffing.

THE COURT: That was to be transferred to Sao Paolo?

THE WITNESS: Yes.

Q Now, at that time, in July, were you doing any business with any customers on cable harness work?

A We were doing business with Honeywell at their Lawrence, Massachusetts, plant.

Q And for how long had that project been going on?

A Well, the project itself had been going on for over a year, in that we had been visited, our Barbados

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

plant had been visited for the purpose of a survey by a Honeywell vice president named Kaper, and his general manager, named Rose, and they had toured the facility and they had gone back in, in effect, told Honeywell that this looked like a pretty good opportunity to get some of this work off their hands. After that they gave us a pilot run on the cable harnesses for approximately a hundred thousand dollars.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T4

Q Were you working on that pilot run at the time of the decision to discontinue that type of work at Barbados?

A Yes, we were.

Q Do you recall two individuals by the names of Carroll Launius and Dick Michalsky?

A Yes, I do.

Q Who were they?

A They were two employees of our plant. They were technicians, I believe, in our plant at Barbados, and they were sent to the Honeywell-Lawrence plant -- Honeywell's plant and given free training in Honeywell's techniques to fabricate and assemble harnesses. They brought this knowledge with all the procedures back with them to the Barbados plant.

Q I show you what has been marked Plaintiff's Exhibit 58, which purports to be a copy of a letter from Mr. Huntoon to Mr. Gritten, which I take is Mr. Gretten, under date of July 15, 1970, and I ask you if that shows a copy going to you?

A Yes, it does.

MR. McCONNELL: I offer 58 in evidence, your Honor.

THE COURT: Have you seen this?

MR. MALONEY: Yes, your Honor. No objection,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gp2 Tucker-direct

with the same reservation we have had all along.

THE COURT: 58 will be received and we will take our afternoon recess at this point.

xx (Plaintiff's Exhibit 58 received in evidence.)

(Recess.)

MR. McCONNELL: If the Court please, I would like to read at this time Plaintiff's Exhibit 58 to the jury.

THE COURT: All right.

MR. McCONNELL: "Subject: Honeywell-Lawrence. The purpose of this letter is to bring you up to date" --

THE COURT: Would you indicate who the letter was from and to whom?

Q Who is Mr. Huntoon?

A Mr. Huntoon is the sales representative for the New England area.

Q He is the author -- the writer of this letter?

A He is the writer of this letter.

Q Who is he sending it to?

A He is sending it to Mr. Gretten, the plant manager, Barbados.

Q And the date of the letter is?

What is the date of the letter?

A July 15, 1970.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gp3 Tucker-direct

MR. McCONNELL: "The purpose of this letter is to bring you up to date on the results of a visit to Honeywell-Lawrence with Carroll Launius and Dick Michalsky and to express my appreciation for their visit. It was a most beneficial eyeball-to-eyeball meeting. The immediate results of the trip were excellent. Samples that were hand-carried were processed through tests hand in hand with the production and QC people."

I will stop there.

QC I take it would be Quality Control?

THE WITNESS: Yes.

MR. McCONNELLL: "The cables were accepted. Workmanship, dress and quality were acceptable. A report reflecting Honeywell acceptance of ISL workmanship, quality and performance to specification, as well as the turn-on attitude of ISL will be forth-coming very shortly. I wish to state that the progress mad in the last several weeks is excellent and the support extended by Carroll and Dick has been out-standing. This is directly reflected in the conformance to schedule with acceptable parts. I heartily recommend the continued assignment of these gentlemen to the Honeywell cable and assembly

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

programs. The magnitude of these programs cannot be understated. The present cable program is only the initial or prototype phase to see what we can do and how we can do it. The present guesstimate of the yearly cable requirements would be in the area of $4,000,000 for the large facility alone. With three present outside sources and one not producing as yet you can appreciate the potential. It has been and is continuing to be emphasized to me that I can pick up as much business as can be handled. Since the common denominator is labor, this business with Honeywell can be one of 'growth and 'profit.' Add to this a major stuffing program now being generated, with all material and testing to be handled by the customer, you can see the magnitude of this repeat business. With ISL being approved as a vendor by Lawrence, the doors are thus opened to Lowell, Brighton, San Diego, California, and Toronto, Canada."

Stopping there, are those other Honeywell facilities?

THE WITNESS: Those are other Honeywell facilities in the United States.

MR. McCONNELL: "We have arrived and have

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

ourselves at Honeywell. I am now striving to become a 'blue chip supplier.'"

Then he says, "In continued support of the Honeywell cable program, I would like to recommend the following:

"1. That this office be advised by TWX, or Telex, I guess, of all shipments with purchase order number, type and quantity noted. This is to be on the date shipped or delivered to the air terminal. Include the airway bill number on each parcel shipped.

"2. Advise of any material shortage, wherein we can work with Honeywell or the supplier in expediting the shipment to Barbados.

"3. Advise of any design or any production problems so we may correct in close liaison with Honeywell.

"There is much business behind this present order and our level of performance will determine how much we will get. If there is any assistance I can provide, please feel free to call on me. Thanking you for your kind assistance and looking forward to meeting with you personally in the future, I remain"

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gp6 Tucker-direct

And it is signed B.J. Huntoon, with copies going to Mr. Frank Parr, yourself, Bill Tucker, Carroll Launius and Dick Michalsky.

BY MR. McCONNELL:

Q Did you also make some report on the Honeywell cable harness and stuffing business in one of your weekly reports?

A Yes. In the report for the week of July 18, a customer was impressed with the ISL team's enthusiasm and attitude and if we can and want to perform, there is a million dollars a year potential business in cable assemblies alone at this one location for us.

Q Who advised you from Plessey of the decision to discontinue this type of work at Barbados?

A Frank Parr told me verbally about it earlier.

THE COURT: What did he say?

THE WITNESS: He told me of their intention to discontinue this work at Barbados.

Q But then after the decision had been reached did he advise you?

A He confirmed this in writing to me later on, yes, and I testified not to take any more.

THE COURT: When was this, do you know?

THE WITNESS: He told me first about it in a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gp7 Tucker-direct

conversation in early or mid-June. He confirmed it to me in mid-July, early July, I would say.

THE COURT: Well, in relation to this letter that Huntoon wrote to Barbados, was it before or after that, do you know?

THE WITNESS: It was before that.

THE COURT: It was before this letter had been written?

THE WITNESS: Yes.

A In my --

Q Go ahead.

A Did you want me to read the next entry?

Q Yes, in your trip report -- or your market report, and then I am going to get to his Honor's question.

A July 25. The week ending July 25, and this is my direct report.

Q Okay.

A "I want to capture Honeywell corporate by and make arrangements with Plessey, Brazil, before telling Honeywell, Boston, Honeywell-Lawrence and Univac, Salt Lake, that we're going out of these two businesses in Barbados is a management policy decision."

MR. McCONNELL: Excuse me, would you read back

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

his answer.

(Answer read.)

Q Did there come a time when you advised Honeywell of Plessey's decision to discontinue this type of work?

A Yes.

Q Can you fix the date of that, approximately?

A Well, I visited them the first time during the week of July 25 as reported here.

Q On the occasion of that visit did you advise them of the Plessey decision in this respect?

A Yes, I did.

THE COURT: Do you remember what you told them?

Q Can you tell us what you told them?

A I told them that in order to have more room to take care of their orders and in order to give them better service, we were planning to move the cable harness work from the one Plessey division to another, which was much larger and which was much better and I felt confident they would be happy with the service that they got.

Q That's what you told them?

A Yes.

Q You were hoping to keep that business, I take it?

A Certainly.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q But what did the Honeywell people do when they found out of Plessey's decision to transfer this type of work to Brazil?

A We got a negative reaction.

THE COURT: Don't tell us that. Don't use a descriptive word like that. Tell us what they said.

A Well, the purchasing agent at Lawrence said, in effect, "We can't do that. Your facility in Barbados, in effect, has already been blessed by our higher-ups."

He and I both knew that this vice-president named Caper had visited the Barbados facility, liked it, and had gone back and recommended it.

"You have been surveyed and, furthermore, we have just finished training two of your people, which we asked you to send up here. We have trained them and sent them back with the know-how."

MR. MALONEY: Your Honor, I think we are getting into an awful lot of hearsay.

THE COURT: That's not for the truth of it, but I asked the question.

THE WITNESS: This is what the purchasing agent told me, in summary.

Q After that did you secure a production run from Honeywell?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

gp10 Tucker-direct

A No. We were not successful.

Q Do you know what they did with their pilot production order,"they"being Honeywell?

A The one that we had?

Q The one that you had, yes.

A They cancelled the balance.

MR. MALONEY: Can we have a date on that, your Honor?

THE COURT: Yes, if you have anything that would indicate it.

THE WITNESS: I'm sorry, but the cancellation must be in one of the reports that I do not have in this folder.

MR. McCONNELL: I think we can establish that independently from other documents.

THE COURT: All right.

MR. McCONNELL: Rather than spend time on that now, let's go on to another subject.

Q Were there any other customers that you had been asked to do either cable harness or stuffing work for or asked to quote on?

THE COURT: Well, I would like to put it the other way. I think at least in the beginning, did you try to sell customers on these two items other than Honeywell?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Yes, sir.

THE COURT: You did?

THE WITNESS: Yes, sir.

THE COURT: Okay, let's start with that.

Q Did you generate any affirmative interest as a result of those efforts?

A We had a request for quotation from Univac at Salt Lake City.

Q What does that company make?

A Univac manufactures computers.

Q Okay.

A They are No. 2.

Q Do you recall when that request was made?

A I would have to look that up.

THE COURT: Well, it was before the discontinuance of the lines; it was before that?

THE WITNESS: Yes, sir.

Q Do you recall whether you actually processed a request for quotation?

A Yes, we did.

Q What was the final answer, so far as this customer, Univac?

A I don't recall that anything came out of that.

Q Had you secured any business with Univac at the

time of the decision to --

A No, we had not.

Q Okay.

Do you know whether you advised Univac of the decision to discontinue?

A Yes, we did.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T5

Q Would you refer to your July 17th report and see if there is any mention of the Univac situation there; July 18, I guess it is.

A Thank you. That is the request for quotation.

Q What is the order that you are being requested to quote on?

A Three types of cable assemblies, 25,000 to 50,000 pieces of each over three years. Delivery starts 1971.

Q Would you turn to page 2 of that report and see if there is some further mention of the Univac cable harness or stuffing matter?

A Yes, under Univac-Salt Lake, this is Mr. Jack Leddy reporting, the San Francisco man:

"A visit here July 10 revealed that the communication terminals have all been moved here from Roseville, Minnesota. They string stacks and planes in house but expect to go outside as well soon. An 8K bit 18-mill plane will be coming out first. Unfortunately 'they want to try us first on cabling to prove-up an unknown source' for the above RFQ. If policy requires us to no bid it extreme care in customer relations will be needed to avoid jeopardizing future stringing

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

potential."

Q Do you recall having a conversation with Mr. Parr relative to the interrupt of raw material flow to the Barbados plant?

A On a number of occasions.

Q Can you fix a time reference?

A I believe it was mid-July when the changeover was made from our own subsidiary, Scientific Trading Corporation, who was, in effect, our import-export agent and broker immediately adjacent to Kennedy Airport over to the Plessey import-export agent. I believe their name is Barnett-Freeslate.

Q What did Mr. Parr say to you on that subject?

THE COURT: Let me ask one question there. I understood that all these funny company names, Scientific and all that, they were just names. It really was an agent, wasn't it, an individual who was doing this work?

THE WITNESS: Yes, it was, except that I thought two of the people were our employees.

THE COURT: There was some previous testimony before you appeared here. Am I correct in that, that these were names that were used, but it was, in effect, an import-export agent?

MR. McCONNELL: Yes, our agent was Freight Brokers

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

International.

THE COURT: Freight Brokers International, and that these were names that were used, but they were really the people and you are telling us that they changed from that to this other outfit.

Q What did Parr say on that subject?

A He told me, we were having an extreme crucial shortage of the raw materials coming from the States or coming from the customers, in the case of customer-furnished material, and it was piling up in the New York area and it was not going down to Barbados, and this, apparently, according to him, lasted for four to six weeks.

Q Did he say why?

A He told me that it was because Plessey had failed to get the proper import-export licenses before firing our agent.

THE COURT: Do you know anything about the business, whose job is it to get import-export licenses?

THE WITNESS: Excuse me?

THE COURT: Do you know whose job it is to get import-export licenses? Is it the import-export agent or his principal?

THE WITNESS: I think it is his principal. It was my understanding from Frank Parr that he was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

saying that Plessey electronics at Farmingdale, Long Island, where Mr. Clarke is the president, had failed to procure the import-export licenses for Barnett-Freeslate before he fired our agent.

Q I was asking you before about either delivery delay problems or quality problems with customers after June, 1970. Did you mention the Magnavox Company?

A No, I did not.

Q Was there a problem there?

A There was a problem in that we had a hundred-piece order on the books and 95 pieces were on hold subject to our submitting a successful prototype and while the Maganvox memory is a tough memory to make, we had assured Magnavox all along that we could make it.

We had submitted an earlier prototype, which they said was all right to that particular design, but in the interim the actual design of the memory had been changed, so in order to have the plant be able to get at the 95 pieces that were on hold, it was necessary that we submit the first of this 5-piece pilot run to them and get approval.

To the best of my knowledge, that prototype never was delivered when I left the company or until after the end of the measuring year at some time.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q When did you leave the company?

A Actually August 8, 1971.

Q What was the occasion?

A I had been terminated under the contract.

Q When were you terminated?

A I was terminated on April 8th.

Q How about your sales representatives under you, were they continued by Plessey?

A They were terminated.

Q What happened?

A They were terminated in May.

MR. McCONNELL: May I have just a moment, your Honor?

THE COURT: Sure.

(Pause.)

Q Mr. Tucker, I show you Plaintiff's Exhibit 52, which purports to be a copy of letter from John Grey to Dave Gretten under date of October 14, 1970. First, does that show a copy going to you?

A Yes, it does.

THE COURT: John Grey was one of your selling people?

THE WITNESS: My regional representative in the Chicago area; yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Does that refer to the problem with Nuclear, Chicago, that you earlier testified to?

A Yes.

MR. McCONNELL: I offer Plaintiff's Exhibit 52.

THE COURT: You have seen this, Mr. Maloney?

MR. MALONEY: Yes,I have, your Honor. We have no objection with the usual reservation.

THE COURT: All right, it will be received.

xx (Plaintiff's Exhibit 52 received in evidence.)

Q I show you what has been marked Plaintiff's Exhibit 66, and I ask you if you can identify that document?

A Yes, I recognize this is a memo from Jack Leddy, my representative in San Francisco, to Frank Parr, of which he sent a copy to me. I wrote on the bottom of it and sent it on to Frank Parr.

MR. McCONNELL: I offer Plaintiff's Exhibit 66 in evidence.

MR. MALONEY: No objection, with the same reservation.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 66 received in evidence.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. McCONNELL: I ask to read Plaintiff's Exhibit 66 to the jury, your Honor.

Q I know you have identified Jack Leddy as one of your sales reps, but where was he?

A He was in San Francisco.

Q Would he have had the Hewlett-Packard account?

A Oh, yes.

(Mr. McConnell read from Plaintiff's Exhibit 66 in evidence to the jury.)

Q The handwritten portion is yours?

A Yes, sir.

Q It is addressed to Dave and John. Dave is Parr?

MR. MALONEY: It indicates up on the top who the copies went to.

THE COURT: Who were Dave and John?

MR. McCONNELL: I see. Dave Gretten and John Alsop.

Q Who was Alsop?

A John Alsop was, I believe, an interim or he was at that time comptroller. He was in Barbados. He was in the accounting department and he took care of our commission checks.

(Mr. McConnell continued reading from Plaintiff's Exhibit 66 in evidence to the jury.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. McCONNELL: That is all I have.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. MALONEY:

Q Mr. Tucker, I show you Defendant's Exhibit D in evidence, an ISL 1970 sales forecast.

I show you Defendant's Exhibit F, International Scientific, Ltd. Budget, 1970, and I ask you if you have seen those documents before?

A I have seen the 1970 sales forecast before. I was in Barbados when it was made up.

THE COURT: Who made it up?

THE WITNESS: It was made up collectively. We had an annual sales meeting in December of 1969, although one of the regional representatives came down, and this was the results of the notes taken at our sales conference as we discussed each customer.

THE COURT: Who is "we"?

THE WITNESS: The entire sales force.

THE COURT: All these salesmen made up this schedule or was made it up after you had that conference?

THE WITNESS: It was made up from the notes of the conference.

THE COURT: Who were the people that made it up

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

from the notes of the conference?

THE WITNESS: Mr. Kovar.

THE COURT: And you worked with him on it?

THE WITNESS: Yes.

THE COURT: All right.

Q Could you explain to us --

A I have not seen the budget before.

Q All right. We will just stay with the sales forecast.

Could you tell me what the numbers appearing next to the name of each customer represent?

A They represent what we felt we could capture in calendar 1970 in terms of bookings from that particular customer.

Q When you say "capture for bookings," does that mean that you could obtain an order or does it mean that you could also -- withdrawn.

Would you explain what you mean by "capture a booking" from the customer in that amount during 1970?

A Get an order.

Q Now, would that bear any relationship to the percentage of the order that would be delivered in the 12 calendar months of 1970?

A It would bear a relationship in the sense that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

if you got an order from a customer and if everything went well in terms of quality and delivery, on the average you might normally expect that to start to go out the shipping door anywhere from four to six months later on.

Q Let's take --

A With the reservation, of course, that the customer would permit you to. Now, if he scheduled it way out, you couldn't do that.

Q Let's take ICC. It says $180,000. Now, if you submitted a quote to them on May 1, 1970, and you were successful in obtaining the orders, how much time would elapse before you would begin making deliveries under the order?

A Well, as I said, Mr. Maloney, four to six months, which would make it September to November.

Q That would be the normal time lag between obtaining the order and making the first shipment under the order?

A That would be normal average if everything went well, as I mentioned.

Q Mr. Tucker, I show you Defendant's Exhibit CI in evidence and I ask you if you can identify that document?

A It is a letter from Mr. Kovar to me, dated April 20, 1970, a cover letter it is. It includes a copy

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of your Exhibit D. It encloses a copy of the 1970 sales forecast that you just showed me.

Do you want me to read the letter?

Q Yes, go ahead, would you?

A "Dear Bill:

"I have just been reviewing the 1970 sales forecast, which we developed as a result of the inputs from the reps of our December meeting. Copy attached. It is quite obvious that we need more accurate information. What do you suggest?"

Q All right, now what did you understand Mr. Kovar to be asking you?

A Well, he was saying that he would like more specific sales forecast both in the detail of quantity, unit price and in point of time.

Q I see.

A That is the way I interpret it because I answered and this is my handwriting on the bottom of it, so I would like to finish reading the whole thing.

Q Certainly.

A "1. Forecast plant capacity by months."

I put in parentheses "Hewlett," who was the then plant manager.

"2. Load in present backlog."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

And I put in parenthesis "Kovar." This was who should do what.

"3. What's left is all we have available to sell. (Tucker) With a 60 to 90-day lead, of course.

"4. In parallel with Item 1, I will generate a bookings potential forecast rather than a sales booking forecast."

THE COURT: It says 60 to 90-day lead, of course. Now, what is the lead on that?

THE WITNESS: Well, meaning that we could not do anything about what was going to happen in the 60 to 90 days immediately in front of us; that we needed the time to do the planning.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T6

THE COURT: To develop the planning and do the selling?

THE WITNESS: And get the groundwork, yes.That is what I intended.

Q Could you explain the comment number 3, "What is left is all we have available to sell"?

A I would be happy to, Mr. Maloney. What I was saying here was that the main item as far as the growth of this company always has been and is and was the plant capacity.

Q What do you mean by that?

A What I was saying is when you take into consideration the plant capacity by month and the present backlog, what is left over is all we have got to sell.

Q So under number 1 you meant that Mr. Hewitt had to develop a plan by which we would know how much we could possibly produce in any given month during the next 12-month period? Is that correct?

A Yes.

Q Now, if you take your existing backlog of orders you would have to subtract from that the maximum plant capacity?

A Yes.

Q And what you are saying what is left is all we

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

have available to sell, you mean you can't take on more orders than the difference between the backlog and the maximum plant capacity?

A For that month.

Q Or for any given month that is given in Mr. Hewitt's plan?

A Yes.

Q Did I ask you what you mean by item 4?

A Imeant the difference between a bookings potential forecast and a straight sales forecast.

Q Is that what Exhibit D was?

A Excuse me?

Q Is that what Exhibit D was?

THE COURT: Tell him what is Exhibit D.

Q The 1970 sales forecast.

A That was a sales forecast.

THE COURT: And here you say you generate a bookings potential forecast.

THE WITNESS: A bookings potential forecast showing what we could do if we had unlimited plant capacity without any regard for any other limitations, other than what could we capture, assuming we are competitive, assuming the quality is good, and assuming we can deliver.

Q That would include the more specific information,

such as the month in which we could expect to start delivering and how many units we could start to deliver a month?

A That would come as a result.

THE COURT: We will adjourn now for the day. Ladies and gentlemen, I will excuse you now until 10 o'clock tomorrow morning. I hope you have a nice evening. Please don't discuss the case in the meantime.

We will see you tomorrow morning.

(Adjourned to March 15, 1974, at 10 A.M.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

SCIENTIFIC HOLDING COMPANY, LTD.
vs. 72 Civ. 4040
PLESSEY INCORPORATED.

New York, March 15, 1974;
10.15 A.M.

Trial resumed.

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THE COURT: Good morning, ladies and gentlemen. I am sorry we are late starting. I had some other matters I had to deal with -- and that happens in my life. I have a luncheon engagement some distance from the building today, so we will have to take our luncheon recess a little earlier. I have another matter a little after three this afternoon, so that I will excuse you a little earlier today. I want you to know that.

You may proceed.

W I L L I A M T U C K E R, resumed.

CROSS EXAMINATION CONTINUED

BY MR. MALONEY:

Q In connection with the testimony you gave yesterday did you have any notes or records to refresh your recollection other than weekly reports during the measuring year?

A Yes, I did.

MR. MALONEY: I would like the witness to

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

produce whatever records or notes he used to refresh his recollection.

THE COURT: Tell us what they were.

THE WITNESS: Well, at the lunch hour I made a cross reference in order to take less time in finding the particular dates and companies.

THE COURT: Good for you. Have you got your cross-reference? Show it to him.

Q These are just notes you made from the weekly reports?

A Yes, I made a cross reference so I could find a particular customer. I wrote down the customer's name and then the dates of the report so I would not have to do this back-and-forth searching.

Q But other than the notes you made from the weekly reports did you have anything other than the weekly reports from which you could make notes or to which you could make reference to refresh your recollection of the testimony you gave yesterday?

A Prior to being put on the stand?

Q Yes.

A Yes.

Q What were those records?

A Those were my other files which I have.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. MALONEY: Your Honor, I indicated yesterday there were a substantial number of weekly reports other than those Mr. McConnell introduced in evidence. I have compiled a set of all the ones we have in our possession. I would like to mark a copy of that as a defendant's exhibit for identification and I will give the witness a copy.

MR. MALONEY: I believe Mr. McConnell has all the reports.

MR. McCONNELL: I have all the reports.

xx (Defendant's Exhibit CU marked for identification.)

Q Mr. Tucker, I show you Defendant's Exhibit CU for identification and during the course of your testimony I will ask you to make reference to various reports in that document.

Now, going to the question of pricing authority yesterday, did I understand correctly that it was some change with respect to your right to lower price quotations after Mr. Parr took over the marketing function from Mr. Kovar?

A That is correct, Mr. Maloney.

Q Is it your testimony that when you were working under Mr. Kovar's supervision you had discretion to lower

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

prices in order to obtain an order?

A I wouldn't describe it that way, Mr. Maloney. We worked in a different way. Mr. Kovar in most cases would give me the price below which we did not want the business, and I would add to that what I thought would keep us in contention and go in with that price, giving myself the discretion to go down to his "drop dead" price, if you will pardon the phrase,but consulting him again, so I did have quite a bit of discretion, because the prices he gave me were most invariably 10 to 15 per cent below the price we would submit to the customer.

Q But did you have any authority to go below the price which Mr. Kovar gave you?

A Not by any significant amount.

Q Now, what was the difference with respect to your pricing authority under Mr. Parr?

A Mr. Parr gave me no discretion whatsoever.

Q Then you could not lower theprice that Mr. Parr gave you?

A That is correct.

Q Could you increase the price that Mr. Parr gave you?

A I guess I could have.

Q Mr. Tucker, in your testimony yesterday you named

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a number of customers where you thought that ISL had lost orders because they submitted price quotations that were too high or because of a late delivery or poor quality.

Now, what I would like to attempt to do today is determine how much of that lost orders could have been delivered within the measuring year.

Are you familiar with the term "measuring year"?

A Yes.

Q Do you know what period of time that covered?

A Yes, I do.

Q What period was that?

A That was April 1, 1970, through March 31, 1971.

Q I believe that you testified yesterday concerning a prototype for Varian and you made reference --

THE COURT: Prototype of what?

MR. MALONEY: A prototype order for Varian.

Q -- and we made reference to your report of August 22. I would like you to read the entire entry in your August 22 report for Varian to which you made reference yesterday.

THE WITNESS: Would you repeat the question, please?

THE COURT: He wants you to turn to your report for August 22.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Turn to your report for August 22 and looking down, this is apparently information you received from Mr. Jewett concerning Varian -- I would like you to read to the jury what you reported concerning Varian.

A Varian: The above cancellation at no charge is due to prototype quality and delivery. Electrical margins would Fabritex 8 per cent, ISL 6 per cent; both had ringing, but our wiring looks sloppier; prototype was promised 2-6-70, received 8-11-70; pilot run was promised 6/5/70 - 7/10/70; the only way we might get back in would be to make up unit No. 2 "picture book" and take it in on our own to them.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Excuse me, I don't see the word "delivered." It says "Pilot run was promised 6-5--70/7-10-70"on my copy.

You don't have the word "delivered" there, do you?

A No, I don't.

Q I will let you add anything you want to what is written here, but read what is there first.

THE COURT: Is that what you meant, that the pilot run was promised? Did you mean to say that the pilot run was produced on July 10, 1970?

THE WITNESS: I am not sure what I meant.

THE COURT: You are not sure?

THE WITNESS: No.

"The only way we might get back in would be to make up a unit number two 'picture book' and take it in."

Q All right, now, Mr. Tucker, does that refresh your recollection as to when ISL had originally been required to deliver that prototype to Varian?

A February 6.

Q Does that refresh your recollection that that is correct?

A Yes.

Q Andwhen had Varian placed the order for the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

prototype with ISL?

A I will have to go back through all the reports.

MR. MALONEY: Well, I think I have the purchase order here. Maybe we can refresh your recollection.

xx (Defendant's Exhibit CV marked for identification.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T2

Q Mr. Tucker, I show you Defendant's Exhibit CV for identification and I ask you if you can identify that document.

A Yes, that is the Varian purchase order.

Q Does the purchase order indicate the date on which Varian placed the order?

A No, it does not. However, it indicates the date that we accepted it.

Q What date would that be?

A December 26, 1969.

Q Does that purchase order indicate that the prototype was to be delivered by February 6, 1970?

A Under "due dae", it so does.

Q Is there any information on there concerning the pilot run?

A No, there is not.

Q Would Varian have accepted delivery of the pilot run, indicated in your August 22nd report, from June 5th to July 10th if it had not already received and approved the prototype?

A Would you say that again?

Q I believe your testimony yesterday was that Varian had given ISL an order for a prototype plus a pilot run of 10 units.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q And I think the price you put on those 10 units was $27,800. Now, my question to you today is: would they have accepted that pilot run of 10 units before the prototype had qualified?

b2 A No.

Q So, if the prototype had not been delivered by June 5, 1970, we could not have started to produce and deliver the 10 units for the pilot run; is that correct?

A Not exactly, no.

Q Why would that be incorrect?

A Because if you were sure enough of what you were doing, you would, in effect, buy the material for all 11 units. You might even run all 11 units.

Q Do you have any recollection of whether or not ISL did that?

A I don't know.

Q Do you have any recollection of ISL delivering a prototype by February 6, 1970?

A No, they did not.

Q Would your August 22nd report indicate that the prototype that was due on February 6, 1970, wasn't delivered until August 11, 1970?

A That is what I say in my report.

Q Now, do you have any recollection of why the prototype wasn't delivered until six months after the original delivery date?

A It is my recollection that there were extreme difficulties in building that prototype.

Q Do you recall the date on which Mr. Kovar was terminated?

A Yes.

Q What was that?

A Was it June 9th?

Q Yes, sir. So that by June 9th Mr. Kovar was already approximately four months late in delivering the prototype; is that correct?

THE COURT: I don't know why you say Mr. Kovar was.

Q ISL, the plaintiff?

THE COURT: Say ISL. I think that would be a little better.

MR. MALONEY: Yes, I withdraw the question, your Honor.

THE COURT: Thank you.

Q Is it correct that by June 9th ISL was already four months late in delivering the prototype?

Q But that once Plessey assumed control, the prototype was, in fact, delivered on August 11, 1970; is that correct?

A No, it was not delivered until August 11th.

THE COURT: You are both saying the same thing in different ways.

Q That is what I say, it was delivered on August 11th?

A Mr. Maloney, if your point is that we had difficulties making prototypes and manufacturing, yes, we certainly did.

Q Is it your recollection that in order to obtain any substantial order you usually had to build a prototype to the satisfaction of the customer before the production order was released?

A Certainly.

Q I think the first sentence says:

"Varian. The above cancellation at no charge was due to prototype quality and delivery."

We have taken care of the delivery part of it. Do you have any recollection of what the quality problems were with this prototype which caused Varian to reject it?

A It says right there, which I read to you, Mr. Maloney. Both had ringing, but our wiring looked sloppier.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you recall how many customers were competing for this order?

A There were two -- excuse me -- building prototypes?

Q Yes, how many companies were building prototypes in order to capture this particular order?

b3 A Fabritech and ISL.

Q Does it refresh your recollection that RCA and Litton Industries were also competing for this order?

A They may have been competing for the order, but they were not building a prototype to my knowledge.

Q Would you refer to your weekly report for the week of August 15th. On the first page of that report, going down again to Mr. Jewett's reports, would you read to the jury what you reported to ISL concerning Varian.

A On 8K x 18 18 mill prototype, RCA and Litton flunked out. ISL and Fabritech units worked so far. RK had successful visit.

Q Who is RK?

A Mr. Ronald Keppel.

Q Does that refresh your recollection that, in fact, four companies were building prototypes and competing for this order?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Does it refresh your recollection that ISL's prototype passed the first test at which RCA and Litton failed to satisfy Varian?

A Apparently.

Q So that out of four competitors, our unit came in second; is that correct?

A That is right.

Q But Fabritech's was slightly better so Varian gave the order to Fabritech; is that correct?

A That is my understanding.

Q Now, going back to August 22nd report, the last sentence says:

"The only way we might get back in would be to make up unit number 2 picture book and take it in on our own to them."

Could you explain to the jury what you meant by that?

A Well, I meant that after Varian, having cancelled our prototype order and pilot run, that the only way we could attempt to get back in would be to go and make up a prototype with our own money and of our own volition and take it in and hand it to them to try to change their minds in order to attempt to get a portion of the production orders that would be coming.

Q Did that, in fact, occur?

A I don't recall. Perhaps it did.

Q Do you recall testifying yesterday that it took you eight months to prevail on Varian to allow you to come back with a new presentation some time in January, 1971?

A Yes, sir.

Q That would be the new presentation on the prototype that was rejected in August; is that correct?

A Yes.

Q Is that one of the examples that you mentioned where you had requested a quotation some time in January, 1971, and Parr failed to respond?

A That is correct.

Q If we had submitted a new quotation to Varian in January, how long would it have taken before we could have obtained a production order calling for deliveries?

A I have no way of knowing when a customer might place the order, Mr. Maloney.

Q Assuming that we had submitted the quotation by the end of January and they had accepted the order, when is the earliest date on which they would have --

A Accepted the order?

Q If we submitted a quotation by the end of

January and the quotation was acceptable to them, what would be the next step?

A Assuming we were awarded the order?

Q Fabritech has already been awarded the order. As I understood your testimony, when we went back in in January we were going in to try to become a second supplier; is that correct?

A Yes, Mr. Maloney. You want me to assume that we get a portion of the oncoming business?

Q No, I guess what I am getting at is would we have had to submit a new prototype before they would give us any production order?

A All right, let's assume that then.

Q And if we assumed that, is it possible that we could have received any production order from Varian that would have called for delivery of production units before March 31, 1971?

A Probably not.

MR. MALONEY: Thank you.

THE WITNESS: But if we had taken eight months to respond to coming in with the second unit, we had pretty well chewed up the time, hadn't we, since August 22nd and January 15th to get the technical proposal and the pricing never did come until after the end of the measuring

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

year.

Q Who was responsible for preparing the technical proposal?

A The engineering department, which had then been moved to Maynard, Massachusetts, 2,000 miles away from where the work would be performed.

Q Do you recall who the engineer is who was responsible for preparing the new technical proposal?

A Mike Boyce.

Q Is Mike Boyce an engineer who had been originally hired by Mr. Kovar?

A I believe so.

Q Did Plessey retain him during the balance of the measuring year?

A They did.

Q Do you believe --

THE COURT: Where was he, did he go to Boston?

THE WITNESS: He was moved to Maynard, Massachusetts, from Barbados.

THE COURT: He was kept by Plessey but they moved him from Barbados to Maynard, Massachusetts?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: You reminded me that Mr. Boyce didn't

work for Mr. Kovar after June 9th.

Q Of course,Mr. Kovar was no longer there, but Mr. Boyce continued to work for ISL during the rest of the measuring year, ISL-1970, the new company that had been formed?

A Yes.

Q Do you have any reason to believe that Mr. Boyce was not doing his best to come up with a new technical proposal?

A Not at all. I didn't even mean to imply that, but he was no longer under the direction of Mr. Kovar.

Q What would that have to do with it?

A A great deal. Most people carry out the assignments that their bosses give to them.

Q Are you implying that Mr. Parr told Mr. Boyce not to attempt to develop --

A I am not implying that at all.

THE COURT: I think we are getting way off the trolley, guessing what other people might or might not do.

Q Let's turn our attention to Weismantel, Mr. Tucker. I believe you testified yesterday that Weismantel requred quotations on 100 units of a 32K stack?

A That is correct.

Q I believe the number you ascribed to that lost

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

order was $117,500; is that correct?

A Yes.

Q Is that the unit on which you testified that Mr. Parr gave you a quotation that was substantially higher than the competitive price?

A Of $1,600.

Q Dataram was quoting at $1175; is that correct?

A That is correct.

Q Do you recall when ISL originally for the first time ever submitted a quotation for that 100 units of the 32K stack to Weismantel?

A I said I believed it to be some time in October.

Q Do you have any recollection that before the quotation you talked about yesterday that Weismantel had requested quotations on that stack while Mr. Kovar was still with ISL?

A Yes, I do. As a matter of fact, I recall we quoted it prematurely. I don't remember whether we quoted it formally in writing or not, but we quoted it on a basis that we would furnish all the material.

Q By the time --

A (Continuing) And that the program was delayed or held up.

Q By the time Mr. Parr was quoting it, who was

SOUTHERN DISTRICT COURTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

furnishing the material?

A Weismantel.

Q Weismantel was?

A Yes.

Q Do you recall what Mr. Kovar had quoted for the stack?

b4 A No, I don't.

(Defendant's Exhibits CW and CX marked for

xx identification.)

Q I show you Defendant's Exhibits CW and CX for identification and I ask you if you can identify those documents.

A These appear to be, first, a letter of October 23, 1969, from Mr. Kovar to Mr. Beloy, the Weismantel manager.

Q The second letter is a quote from John Grey, our Chicago representative, to Weismantel Associates, dated February 12, 1970.

THE COURT: Have you seen these before?

THE WITNESS: I don't recall seeing them before, your Honor.

Q Looking at those exhibits, does that refresh your recollection that at the time Mr. Kovar was quoting, Weismantel was going to be supplying all the material?

A Yes.

Q So that had not changed by the time Mr. Parr was submitting a quotation?

A No.

Q What did Mr. Kovar quote back in October-- is that October, 1969?

A He quoted six pieces at $1,650 each.

Q What did he quote for the rest of the units?

A Our untested assembly price would reduce to $1,250 per unit after the first six units.

Q Do you recall why the second quotation was submitted by Mr. Grey in February?

A I don't know of any reason other than to update the quote with the customer.

Q Was there any change in the price that Mr. Grey quoted in February, 1970?

A Yes, there was. Mr. Kovar's letter had indicated that starting with unit number 7, the unit price would be $1,250. Mr. Grey didn't give the customer the $1,250 price in this quotation until he reached a hundred pieces.

Q But for the first six pieces, was ISL still quoting $1,650 by February?

A Yes.

Q I think we have established that both at the time of these original quotations and at the time you asked

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Parr for a quotation Weismantel would be supplying all the material; is that correct?

A That is correct.

Q Now, referring to your report of July 11, 1970, have you found it, Mr. Tucker?

A Yes.

Q On the first page under "Quotes requested. Received Weismantel request re look at labor hours estimate on this 30K x 20 with all materials supplied. Dataram at $1,175."

Now, do you have any recollection of why we had not obtained any purchase order from Weismantel based on those original quotations in October and February?

A No, Mr. Maloney, you quote five and six times usually for every order that you capture.

Q Now, when you testified yesterday that you had asked Mr. Parr for a quotation on the Weismantel job, you didnt mean that that was the first time that a quote had been requested for that job, did you?

A No.

Q So this was, by July 11th we are asking for a third quotation based on relooking at the labor hours, is that correct?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q So it had nothing to do with material prices?

A No.

Q Is it my understanding that yesterday you did not recall receiving any response to this July 11th request until some time in October?

A That is what I testified, Mr. Maloney.

MR. MALONEY: What we have also done, your Honor, is that from time to time Mr. Gretton would send letters to Mr. Tucker in response to these weekly reports and we have included them in this exhibit as well.

THE COURT: That is right. Mr. Tucker, you got letters from Mr. Gretton in this period in connection with your reports?

THE WITNESS: Yes, sir.

Q Just staying with your July 11th report, if you just turn past your July 11th report, we see a letter, dated July 17th, to you from Mr. Gretton, is that correct?

A Yes.

Q Now, if you turn over to page 2 of the letter we see the heading "Number 2" -- withdrawn.

The letter begins: "Dear Bill:

"Thank you for the two marketing reports received on July 15, 1970. I would comment as follows:"

And then "Number 1" is a response to your

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

July 4th report and going over to the second page it says:

"Number 2. Week ending July 11, 1970."

Going down to C, it says:

"Weismantel, new quote will be ready for Frank Parr by July 20th."

Does that refresh your recollection that, in fact, ISL under Plessey did promptly respond to your request for a new quotation in July?

A No, Mr. Maloney.

Q It doesn't?

A It does not.

Q All right.

A Because you are referring to the cost estimate coming out from the plant to Mr. Parr.

Now, whether it arrived on July 20th or not, I don't know.

Q But you have no recollection of Mr. Parr giving you a new quotation in July, is that correct?

A That is correct, because Mr. Parr took those cost estimates and did the marking up of them to generate the prices.

Q Is he got all of that material from the plant in July, as Mr. Gretton had promised, would it take him

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

from July until October--

THE COURT: How does he know?

MR. MALONEY: All right. You have no recollection.

Q Would you turn to your weekly report for September 19th. At the top of the first page, do you have it, Mr. Tucker, September 19th?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T3

Q Under the heading "Requested Summary," it says"Weismantel 32K x 20, all material furnished Ray."

And next to that someone has written the words "Poor credit risk."

Now, do you recognize that as your handwriting?

A Yes, I do.

Q Could you explain to the jury what that meant?

A Well, it meant that in the particular history of Weismantel, they had gone through a period where they were not promptly paying their bills.

Q And you indicated by that handwritten comment that we should stop pursuing that order that we had been chasing since October, '69, because of Weismantel's poor financial condition?

A No, Mr. Maloney, that was a note written to myself. It did not appear in the report and I did not send it to anyone. You received it simply because you Xeroxed my notes.

THE COURT: It's not in the copy I have.

A (Continuing) I also would like to bring out while we are on the subject of Weismantel --

MR. MALONEY: Excuse me, your Honor, it's not on the copy you have, December 19?

THE COURT: No, nothing on that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. MALONEY: On these Mr. Tucker was using the American dates. The dates are not reversed on these reports, sir.

MR. McCONNELL: I think the witness's explanation was that these are Xeroxes of copies he furnished from his file.

THE WITNESS: I might add we had a number of companies that were existing customers who were poor credit risks.

Q Well, if you are going to operate a business at a profit, is it a good business practice to take orders from companies that may not be able to pay you for the products you deliver?

A I didn't say that. I said that they were late in payment. It is all relative, Mr. Maloney.

Q Do you have any recollection of whether Weismantel had let this contract for 100 units to any other vendor by September or October, 1970?

A No, not to my knowledge.

Q Would that be because they didn't have the money?

THE COURT: He doesn't know why not. I don't see how you can pin him down on that. Obviously, he doesn't know that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Mr. Tucker, do you recall in February, 1971, you made a trip with Mr. John Grey, one of the regional representatives, to visit his customers?

MR. McCONNELL: Do you have some specific report?

MR. MALONEY: February 27.

THE WITNESS: I have found it.

Q Let's look at your weekly report for that week before we turn to the trip report. For your weekly report for February 27, 1971, at the bottom of the first page it says, "Weismantel re Quote 32K x 20, all material furnished, untested quantities, due 3-31."

Now, would you explain to the jury what that entry means?

A It means that when we were on the trip --

Q Let me withdraw the question and ask --

A -- it is a request for quotation, Mr. Maloney.

Q Would that indicate that Weismantel by February 27 had still not let an order to any vendor for that 100 units of the 32K stack?

A Not necessarily, Mr. Maloney. I have no way of telling. It could be the second hundred. It could be the third hundred.

Q You have no way of recalling?

A I have no way of knowing.

Q Your trip report with Mr. Grey for February 27 is immediately following that weekly report. Turning to the last page of the trip report, the last entry is Weismantel, Joe Beloit,purchase: "This company is in financial good health and we picked up the two RFQs listed this week."

Do you have any recollection of what that was intended to indicate to ISL?

A It was simply a report, as I recall. Weismantel had gone through a very difficult period in which they had not gotten their financing, and by the time we had visited them here in February I do recall one of the first things we heard when we walked in was that the financing had come through and they had plenty of working capital and they were expanding. In fact, I recall they showed us a new building that they were building.

Q Well, during this discussion do you recall asking Mr. Beloit whether or not they had ever let the contract for the 100 units of the 32K x 20?

A No, I don't.

Q I believe yesterday you also testified concerning a possible order from Honeywell/Framingham in which a quote was requested on or about January 9, 1971. That

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

was the one where we were the highest bidder out of all of the 11 companies that were competing?

A I remember.

Q A 4K x 18 stack? Is that correct?

A That is correct.

Q And by your calculation yesterday you felt that because of our not competitive pricing we had lost an order of $300,000? Is that correct?

A That is correct.

A Now, based on the amount of time you have told us it takes between submitting a quotation, obtaining an order, and beginning to make deliveries, is it possible, is it physically possible that even if we had obtained this order we could have delivered any of that $300,000 order by March 31, 1971?

A It's possible we could have delivered some.

THE COURT: That is a little hard for you to judge?

THE WITNESS: As I recall, this particular stack, 4K x 18 3-wire 22 mill was quite close to the standard stack which I referred to previously that Mr. Boyce had designed that was not taken into Varian.

Q Do you recall that prior to January 9, 1971, ISL had, in fact, submitted a quotation for the 4K x 18?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A That we had.

Q Yes, that we had submitted a quotation, so that, in fact, the January 9 request was for a re-quote?

A Mr. Maloney, there is no request for quotation in the January 9, 1971, weekly report from Honeywell/ Framingham.

Q I was not referring to the weekly report. I thought you said in your testimony yesterday that it was on or about January 9 that the quotation was requested?

A No, it was in the January 9 report where we find the results of our having quoted, the feedback, namely, to be told by the purchasing people, Mrs. Eleanor Smith, that we were 11th out of 11 -- under Huntoon, page 1, Section 3, paragraph B, Huntoon.

Q I show you Defendant's Exhibit CY for identification and I ask you if you can identify that document?

MR. McCONNELL: May I see what you are showing him?

THE COURT: You will.

A I have never seen this before.

THE COURT: You can't identify it?

THE WITNESS: However, I notice that it confirms my statement, Mr. Parr quoted .06 cents per bit on our 4K x 16, but I am rather upset to learn that hewent

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

directly to the customer with not so much as a copy to me.

THE COURT: With that we will take a short recess, ladies and gentlemen.

(Recess.)

THE COURT: You may proceed, Mr. Maloney.

BY MR. MALONEY:

Q With respect to the Honeywell/Framingham request for quotation, do you recall the date by which the quotation had to be submitted to Honeywell/Framingham and any additional presentations that would be made in order to obtain the order?

A Not offhand. I would have to look back and see.

xx (Defendant's Exhibit CZ marked for identification.)

Q Mr. Tucker, I show you Defendant's Exhibit CZ and ask you if you can identify that?

A I have never seen this before.

THE COURT: Then he can't identify it.

Does it refresh your recollection?

MR. MALONEY: Up at the top I believe there are some words saying "Final Presentation 2/1/71."

Q Does that refresh your recollection that that was the final date for submission of quotations to Honeywell/

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Framingham for this contract?

A No, it doesn't, I'm sorry.

Q I show you again Defendant's Exhibit CY, which was the quotation submitted by Mr. Parr to Mrs. Smith at Honeywell/Framingham and turning to the second page is a quotation on the 4K x 18, and following the prices it says lead time, quantity of one, earliest ten weeks ARO.

Could you explain to the jury what ARO means?

A After Receipt of Order.

Q And it says then normal delivery 12 weeks ARO, and then beneath that it says all other quantities earliest 8 weeks ARO; normal delivery 10 weeks ARO.

I ask you if that refreshes your recollection that it would have taken at least --

THE COURT: I think this is sort of difficult.

You never saw that thing before, did you? So that is something that Parr sent out without showing it to you?

THE WITNESS: I don't know the relationship between the delivery of the quotation and the delivery of the product. If you give 10 weeks ARO, that is your delivery promise.

Q Let me ask you one further question. If the final date for submission of quotations was February 1,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

1971 --

A It was not, sir. That is the English notation. It is 1/2/71.

Q January 2?

A Yes.

Q Assuming that is correct,that it was January 2?

A Well, I am not assuming, I am looking at my report dated December 19 under Quotes Requested Honeywell/ Framingham, and then it lists the 3000 pieces of the 4K x 18 3-wire 22 mill, and I have said right there due 12/31/70.

Q Using that date, based on the quotation which Mr. Parr submitted, what was the earliest date by which we would begin delivering products to Honeywell/Framingham if we had received the order?

A 10 weeks makes it the second week in March.

Q So there would be only two weeks left in the measuring year within which we could make deliveries under that order if we had obtained it?

A No,three weeks.

Q Excuse me. When you said 2-1-71 is the English system and it should be really 1-2-71, is that Defendant's Exhibit CZ for identification to which you were referring?

A When you said 2-1-71 I assumed you had gotten it off of that. You handed me that and that is what it says

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

there, 2-1-71.

Q Let me show it to you again.

A I told you, I have never seen this before. I assume this is some notation of Mr. Parr.

THE COURT: I don't think the witness can answer it.

THE WITNESS: In fact, it says right here, Mr. Maloney, it says reply needed December 31, 1970, latest, which is exactly what I read to you a moment ago from my report 12-19.

Q But none of the other dates on that document are reversed under the English system? Is that correct?

THE COURT: I am not going to get into that. I will sustain an objection to that. It is a document he has not seen, and I don't know why you go into it.

Q I think the largest order you told us about yesterday was Technology Marketing, where according to your calculations you indicated that you thought we had lost an order for a million dollars based on non-competitive pricing? Is that correct?

A That is correct.

MR. McCONNELL: I don't think that is quite an accurate characterization of his testimony. I think he said the potential order was a million dollars.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Is that what you said?

THE WITNESS: I said had we captured one-quarter of the order on Item 1 alone, 4K x 16, it would have been a million dollars.

Q I believe you testified that the competitive price at which we would have to build in order to obtain that order was $400 per unit for the 4K x 16?

A Yes, that is right.

Q Did I understand your testimony correctly that that request for that quotation was on July 11, 1970?

A Yes, that is correct.

Q Do you have any recollection of whether or not Technology Marketing had requested a quotation from ISL in Aprilwith respect to a 4K x 16?

A We had quite a number of requests for a quote from Technology Marketing. What month do you refer to?

Q April, Mr. Tucker, April, 1970.

A I am sorry, my book that you gave me here skips from from March to June.

MR. MALONEY: I have not been able to find any reports between March and June. That is why they are not included.

xx (Defendant's Exhibits DA through and including DF marked for identification.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, Mr. Tucker, I show you Defendant's Exhibit DA for identification and ask you if you can identify that document?

A It appears to be a quotation dated April 13, 1970, from Sam Jewett, our last representative, to Technology Marketing, together with a cover note to Mr. Kovar from Mr. Jewett, and we were quoting to Technology Marketing on the 4K x 16 in that quotation.

Q Can you tell from the document, Mr. Tucker?

A What we were quoting?

Q Yes, what did we quote to Technology Marketing for the 4K x 16?

A For 4K x 16 20 mil -- youwant the largest?

Q Well, perhaps you could.

A We quoted 600 pieces at $485 each.

Q That would be the higher quantity? Is that correct?

A Thatis the highest one in this quotation here.

Q I show you Defendant's Exhibit DB foridentification and ask you if you can identify that document?

A This appears to be a quotation dated April 14, again from Mr. Jewett, to Technology Marketing, quoting the same 4K x 16, 600 pieces at $450.

Q Had he lowered his price?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q I show you Defendant's Exhibit DC for identification and ask you if you can identify that?

A It is a letter from Mr. Kovar to myself dated April 17.

MR. MALONEY: I offer it in evidence, your Honor.

MR. McCONNELL: No objection.

xx (Defendant's Exhibit DC received in evidence.)

MR. MALONEY: May I read it to the jury?

THE COURT: Yes.

Q Do you recall with reference to the Technology Marketing quotation that you testified to yesterday, whether it was a 20 mil or some other type? Do you have any recollection?

A That was a 20 mil.

Q That was a 20 mil also?

A Yes.

(Mr. Maloney read from Defendant's Exhibit DC to the jury.)

Q I show you Defendant's Exhibit DD and I ask you if you can identify that document?

A A letter dated April 20, 1970, from Mr. Kovar

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to Mr. Jewett, subject: Technology Marketing.

Q Was this a copy sent to you, Mr. Tucker?

A Yes.

Q Do you recall receiving that letter?

A I apparently did.

MR. MALONEY: This apparently should not be attached. I think Mr. Kovar just made that out for his secretary to type from.

THE COURT: Well, show it to Mr. McConnell.

MR. MALONEY: Do we agree we do not need the handwritten copy?

MR. McCONNELL: Yes.

MR. MALONEY: I offer DD, your Honor.

xx (Defendant's Exhibit DD received in evidence.)

MR. MALONEY: May I read it to the jury?

THE COURT: Yes.

(Mr. Maloney read from Defendant's Exhibit DD to the jury.)

Q Mr. Tucker, I show you Defendant's Exhibit DE for identification and I ask you if you can identify that document?

A It is a letter from Mr. Jewett back to Mr. Kovar, subject: Technology Marketing, together with a series of quantity versus price, graphs of quantity versus price.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T4 Q Mr.Tucker, do you recall ever receiving a copy of that letter in April, 1970?

A It appears I did.

MR. MALONEY: I offer it in evidence, your Honor.

MR. McCONNELL: May I see it?

No objection.

THE COURT: All right, Exhibit DE will be received.

xx (Defendant's Exhibit DE received in evidence.)

MR. MALONEY: Your Honor, it is a long letter. Rather than reading it, could I just ask Mr. Tucker --

THE COURT: Who is the letter between?

MR. MALONEY: From Mr. Jewett to Mr. Kovar and I think Mr. Tucker had indicated he had received a copy of it.

THE COURT: I think I would rather have you read any parts you want to read and I will let Mr. McConnell read anything he wants to read. I don't know why Mr. Tucker would be called upon to evaluate what these other people were talking about.

MR. MALONEY: All right. The first part talks about the problems with reducing or changing the quotations referred to in the prior letters that we had introduced in evidence.

Mr. Jewett then goes on and this is addressed

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to Mr. Kovar on April 24th.

(Mr. Maloney read from Defendant's Exhibit DE to the jury.)

Q Now, do you know what Mr. Jewel was referring to when he said, "On the basis of our performance with Modicon and Raytheon"?

A I believe so. I think those were two customers who Technology Marketing had played a role in our becoming one of their vendors and, if I remember correctly, we had had some quality and delivery problems.

Q That was back in April, 1970?

b2 A Yes.

Q What is EMI, Mr. Tucker?

A Electronic Memories, Inc.

Q Was that one of ISL's competitors for the type of contracts they were trying to obtain?

A Yes.

Q When Mr. Jewett said: "The order went to EMI on the basis of the greater confidence factor, local engineering and repair and a lower buy back price schedule", what was he referring to there?

A Do you want to take those one at a time?

Q Sure.

A What is the first one again, please?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Greater confidence factor.

A I think that is self-explanatory. EMI is also in suburban Los Angeles. They have access to each other's plants. They probably know each other better. We are in Barbados.

Q How about local engineering and repair?

A The same thing. They are a few miles apart, across town.

Q Is it fair to say that when a customer makes a decisin as to which vendor to choose, he considers other factors in addition to price?

A Yes.

Q The customer doesn't just accept the lowest bid, but considers these other factors such as confidence, where the engineering and repair facilities are located and perhaps other factors, is that correct?

THE COURT: Price, quality and delivery, is that right?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q Finally, I show you Defendant's Exhibit DF for identification and I ask you if you can identify that.

A It appears to be a letter from Mr. Kovar to Mr. Jewett, dated April 28, 1970.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you recall whether or not you received a copy of that letter?

A I don't recall, but I probably did.

MR. MALONEY: I offer it in evidence, your Honor.

MR. McCONNELL: May I see it?

No objection.

THE COURT: All right.

xx (Defendant's Exhibit DF received in evidence.)

MR. MALONEY: May I read it to the jury, your Honor?

THE COURT: Go ahead.

(Mr. Maloney read from Defendant's Exhibit DF to the jury.)

Q Mr. Tucker, will you explain to us what conditions would have changed between April, 1970, and July, 1970, which would have permitted ISL to bid on the new request for quotati0n by Technology Marketing for the 4K x 16 at a price of only $400?

A As opposed to $460?

Q Let me get the last price rate.

Yes, in Defendant's Exhibit DD for identification, Mr. Kovar had indicated that for up to 500 his lowest price would be $460.

A Well, the two most important things, Mr. Maloney,

in the first place, the prices of the cores themselves decreased, but the other point is you've got oranges and apples there. You've got 600 pieces, only 600 pieces at $460, and over here we are talking about 2,500 pieces minimum or a 10,000-piece quotation at 400. I don't see how you could make any comparison.

In fact, if youmake a comparison, it seems to me they fall right on the price quantity curve.

Q So, you feel that the difference was that the first order was limited to just 600 pieces?

A It wasn't limited. It is a specific quotation, quantity 600, unit price $460.

I am talking about over four times the quantity. 2,500 pieces at $400 was how I got my million dollar estimate.

THE COURT: What you are saying is that once you set up to manufacture an item and you manufactured substantially larger quantities, you had your setup so that yourmanufacturing cost is less?

THE WITNESS: Yes, sir.

THE COURT: The jury and I don't know about all these technical things, but I think we can understand that.

Q Are you familiar with how ISL obtained their cores, who they purchased them from?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A We purchased from two sources, Ampex and EM&M, EMI, as you referred to it.

Q Do you have any idea of what the contractual relationship was with those two suppliers, how much core we were required to buy from them during 1970 and at what prices?

A I recall having known at one time, but I don't believe I have any records.

Q Do you have any recollection of whether you ever knew whether or not we would have a right to demand that they sell us cores at lower prices if the market price generally for cores went down?

A I have no knowledge.

Q With respect to the million dollar order itself on which the quotation was requested in July, do you have any recollection when deliveries were started under that contract if we had obtained the contract?

A No, I do not, Mr. Maloney.

Q Do you have any recollection --

A Excuse me. I find in my July 11th report, opposite Mr. Jewett, Technology Marketing " The above rfq is perhaps the most important one in this area for fall 1970 and '71 business. The 10,000 units will probably be split three ways, 2,500 units will go for .6 cents per

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

bit."

So, to answer your question, it was for fall delivery, according to my records.

(Defendant's Exhibit DG marked for identification.)

xx

Q Mr. Tucker, I show you Defendant's Exhibit DG for identification and I ask you if you can identify that document.

b3

A I have never seen it before, Mr. Maloney.

Q You will notice that it is signed by Robert K. Lowry and it is on the stationery of Technology Marketing; is that correct?

A Yes.

Q The subject is "Request for quotation, job 118." Then it gives some additional information.

Would this be the request for quotation that you discussed in your testimony yesterday?

A It appears to be, Mr. Maloney.

MR. MALONEY: I offer it in evidence, your Honor.

MR. McCONNELL: No objection.

xx

(Defendant's Exhibit DG received in evidence.)

MR. McCONNELL: Is this a copy for me, Mr. Maloney?

MR. MALONEY: Yes.

MR. McCONNELL: Thank you.

MR. MALONEY: Your Honor, may I read parts of it? I will try to leave out the more technical information.

THE COURT: On the same understanding, if Mr. McConnell wants to read anything. Go ahead.

MR. MALONEY: Certainly.

(Mr. Maloney read from Defendant's Exhibit DG to the jury.)

THE COURT: Why don't you identify Mr. Keppel again?

Q Mr. Keppel was the chief engineer at ISL, is that correct, Mr. Tucker?

A Yes.

THE COURT: In Barbados?

THE WITNESS: In Barbados.

MR. MALONEY: Yes, sir.

(Mr. Maloney continued reading from Defendant's Exhibit DG to the jury.)

Q Stopping right there, Mr. Tucker, would you explain to the jury why Mr. Lowry was not identifying the name of his client?

THE COURT: How does he know?

MR. MALONEY: He does know, your Honor.

THE COURT: I don't know really. Any objection to that? I don't quite know why you ask this witness

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

things because some other guy says that he won't give the name of the client.

MR. MALONEY: Let me withdraw the question, your Honor, and I will ask a different question.

Q Would you explain to the jury, Mr. Tucker, what the business of Technology Marketing was?

A Technology Marketing was the most successful and best known memory consultants in the computer industry. They would take over the complete job of designing and prototyping, creating a bill of material and even placing the initial orders for a customer.

Q They would do this --

A They would do a complete turnkey job as far as the memory was concerned and this permitted many companies to economize and not have a full blown memory engineering department.

Q So, rather than the computer manufacturer himself going out and soliciting the orders and the design proposals, the manufacturer would retain Technology Marketing to do that initial work for it?

A That is correct.

Q So that the order would not have been with Technology Marketing, but with the customer to whom Mr. Lowry is referring in the letter, is that correct?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Not necessarily. As I tried to say, Mr. Maloney, and in many cases Technology Marketing will actually place the production orders for the client so you can have orders from Technology Marketing or you can have it from their customer, depending on their arrangement.

MR. MALONEY: All right.

(Mr. Maloney continued reading from Defendant's Exhibit DG in evidence to the jury.)

Q Could you explain to the jury what that means?

A I can't explain it other than what it says there, Mr. Maloney.

MR. McCONNELL: Your Honor, he didn't write this letter; it didn't come to him.

THE COURT: I am surprised you are asking this gentleman to tell you what Mr. Lowry means when he writes Mr. Keppel on June 27, 1970, unless there are some words of art or something like that that I think he could help on.

THE WITNESS: There is no technical content to the sentence, Mr. Maloney. It is straightforward.

THE COURT: I think it will have to speak for itself.

MR. MALONEY: Let me ask some questions then.

Q Was it your understanding that when Technology Marketing was requesting a quotation that there would be

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

any actual production order commencing in 1970 or would there only be a prototype order for the small pilot run in 1970?

A It was my understanding that there would be production in the fall of 1970, as I so reported and read to you from my report of July 11th.

MR. MALONEY: Let me continue reading, your Honor.

(Mr. Maloney continued to read from Defendant's Exhibit DG to the jury.)

Q Now, with respect to obtaining the order for 10,000 units of production, do you recall that it would be necessary to build the prototypes referred to in Mr. Lowry's letter to the satisfaction of Technology Marketing before any order for 10,000 units would be given to ISL or any other vendor?

A Of course, Mr. Maloney, but I don't consider a 120-unit of 4K by 16 a prototype order.

Q No, but this calls for--

THE COURT: I notice the next sentence says: "Order let date is scheduled for July 27, 1970."

MR. MALONEY: Yes, sir.

Q The 129-piece order is not what you were referring to in your testimony yesterday when you referred to

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

an order of $1,000,000, is that correct?

A Obviously.

Q What was the price of the unit, $400 you said would be the competitive price?

A Yes.

Q Do you recall that based upon the request for quotation the only thing that would be delivered during 1970 were the five prototypes plus the 115-unit pilot run at $400 per unit?

A I don't understand the question. Will you say that again, please?

(Question read.)

A I don't know how you arrived at that.

THE COURT: The answer is no, then?

THE WITNESS: No.

THE COURT: Don't argue about it. That is not your understanding, I take it, is that right?

THE WITNESS: That is right.

Q How many units did you understand would be called for for delivery in 1970?

A I didn't know at the time that I made my notation here. I said the fall of 1970. Now, just using this document that you came up with, it says the order let date will be July 27th. It says that the art work, manufacturing

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

drawings and circuit boards for the first prototype will be furnished.

It would be reasonable to think that you could run that in three months after you got the order, August, September, October.

Q Just one final question.

A (Continuing) And still have two months left in the year to --

THE COURT: You have answered the question.

Q Just one final question on this. Referring to the first sentence in the fourth paragraph of Mr. Lowry's letter, it says:

"The initial will be for a pilot run of 120 units, which will be followed by production runs of up to 10,000 units for 1971-72."

I ask if that refreshes your recollection that the 10,000 units were to be delivered over the two-year period 1971 and 1972?

A No, Mr. Maloney, it does not.

xx (Defendant's Exhibit DH marked for identification.)

Q Mr. Tucker, I show you Defendant's Exhibit DH for identification and I ask if you recognize that letter.

A I have not seen this letter. I got a copy of it, but I don't recollect it.

Do you mind if I read it?

MR. MALONEY: I offer it in evidence, your Honor.

THE COURT: Any objection?

MR. McCONNELL: No objection.

THE COURT: It will be received.

xx (Defendant's Exhibit DH received in evidence.)

Q Mr. Tucker, what were conditions in the industry in which ISL was competing in 1970?

b4 A The calendar year?

Q Yes.

A They were rather good although they were down slightly. I am speaking in general now. They were down slightly from the previous year.

Q How about the last six months of 1970?

THE COURT: What do you want him to say about that? As compared to the first six months or compared to the last six months of the prior year or what do you mean by that?

You mean compared to the first six months?

Q Compared to the first six months, Mr. Tucker.

A They were not as good.

Q Was there, in fact, a recession in the industry in the last six months of 1970?

THE COURT: We read all about recessions, but

I don't know that I want to get into what a recession is. Let's have him answer what the basis was for the condition in the industry so far as he can recall that.

A I would say that the amount of business that was available or the level of activity in the computer industry in general was lower in the last six months of 1970 than it was in the first six months.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T5

Q Was it much more difficult to obtain new orders than it had been in the first six months of 1970?

A As far as ISL is concerned?

THE COURT: Yes.

THE WITNESS: Slightly, I guess.

Q Only slightly? Referring to your weekly report for the week of July 11, 1970, Mr. Tucker, on the first page:

"Activities; A. Direct - with the summer slump now on top of the recession in the computer industry very few summer bookings are expected. However, the RFQs and prototypes at the plant are for Fall 1970 and 1971 business. They are vital if we intend to grow to 500 people."

Now, what were you attempting to convey to the people at ISL by those remarks in your weekly report?

A I was trying to say that I did not foresee much activity in our summer bookings, and I was trying to point out that the request for quotes which we had acquired in the Spring and the prototype orders which we had in the plant were, as I say, the key to the Fall of 1970 and 1971 business and if we intended to grow as we had.

Q Will you explain what you meant by the summer slump?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A The months of the summer period is a slower business period. It is an annual event that happens. Plants are sometimes shut down for two weeks. Key people take vacations. It is just a general slowing down.

Q When does activity usually pick up again?

A My experience has been it is after Labor Day.

Q And in 1970 did business pick up again after Labor Day?

A Not as it should have.

Q Do you recall why not?

A I don't really know the underlying reason, Mr. Maloney.

Q Mr. Tucker, could you explain what an annual buy is? Are you familiar with that term?

A Annual buy is when a customer wants to get the lower price that goes with a larger quantity and he is immediately ready to place a purchase order for, so he estimates how many he will use for over a period of one year annual buy, and he makes purchase order releases against this intent quantity and he thereby gets the lower price that goes with the higherquantity on the smaller orders as he releases them out.

Q Now, referring back to Technology Marketing, do you recall whether or not that was an annual buy?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I referred to it as an annual buy.

THE COURT: All right, gentlemen, we will recess now until 1.45. Thank you very much.

(Luncheon recess.)

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

AFTERNOON SESSION

1:45 P.M.

(In open court; jury present.)

W I L L I A M T U C K E R, resumed.

THE COURT: Good afternoon, ladies and gentlemen.

All right, Mr. Maloney, you may proceed.

CROSS EXAMINATION CONTINUED

BY MR. MALONEY:

Q Mr. Tucker, do you have any present relationship with the plaintiff in this action, Scientific Holding Corporation?

A I am a stockholder.

Q How many shares do you own?

A I own 3,500. I would like to add that I acquired those shares through options, including foregoing taking certain expense accounts while I was working full time for them.

Q Mr. Tucker, I show you a copy of Defendant's Exhibit D for identification, the ISL-1970 sales forecast. I believe you identified that yesterday as the document that you and Mr. Kovar prepared based on the conference with the sales representatives in Barbados in December, 1969.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A That is correct.

Q On Exhibit D I see a contract for or a projection for Raytheon of $88,500; is that correct?

A That is what it says on the third line from the bottom.

b2

Q I show you Defendant's Exhibit DH, one of the exhibits I showed you this morning, the July 6, 1970, letter from Mr. Jewett to Mr. Hewitt, and I believe in reading that letter he indicated that the Modicon units ISL is presently supplying were ordered through TMI as were the Raytheon computer stacks later cancelled.

I ask you whether or not you can recall whether Mr. Jewett is referring to the Raytheon order, which appears on the 1970 sales forecast, Exhibit D.

A I believe he is.

Q So that, in fact, some time prior to July, 1970, ISL had obtained the order from Raytheon in the amount of $88,500?

A Approximately.

Q Or in some amount?

A Yes.

Q Do you recall when that order was cancelled?

A I will have to look that up in my notes.

Q Do you recall just generally whether or not it

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

was before or after June 9, 1970?

A It was before.

Q I believe yesterday another of the orders which you mentioned, which we lost, was an order in the amount of $82,000 from Mohawk Data Processing.

A Sciences.

Q Sciences. Was that based upon failure to -- withdrawn.

Was your testimony that the reason we lost that order a combination of late delivery of the prototype and high pricing?

A No, I did not testify to losing the order due to high pricing. I testified due to the fact that we had to build the prototype three times.

Q Do you recall when we began building the prototype?

A I believe it was--

Q I think you said April 11, 1970.

A I believe the order was captured in the week of April 11th.

Q So that we had to build it between April 11th and July 31st and we were required to build -- was it a single prototype or more than one, do you recall?

A There was only one type of memory we had to build, it was a very small one. We had to build two units, I

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

believe.

Q We had to build two prototypes?

A Two pieces of the same memory.

Q Did you testify that the first two prototypes that we built were rejected?

A That is correct.

Q Do you recall whether those first two prototypes were rejected before or after June 9th, 1970?

A I do not. I do recall that the due date on the prototypes was certainly before July 31st. I recall testifying that July 31st was actually the drop dead date, the last chance to submit them.

Q Do you have any recollection when the first deadline had been by which we were to submit the prototypes to Mohawk?

A I could try to look it up for you.

MR. MALONEY: It is not that important. If you have no recollection, I don't want you to take the time to look it up unless you would like to or Mr. McConnell would like you to do it.

Q Do you recall how much business ISL obtained from Mohawk Data Sciences during 1970?

A No, not offhand.

Q Referring to Defendant's Exhibit D again, the

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

1970 sales forecast, I believe the projection was $75,000. Do you have any recollection of whether or not we, in fact, over the course of 1970 obtained more or less than the $75,000 of business from Mohawk?

A I don't recall.

Q Other than the $82,000 order which we lost, do you recall whether or not we quoted and obtained additional orders from Mohawk Data Sciences during 1970?

A I am quite sure we did. There was another memory which wewere previously building for them called a 1K x 12. I am sure that sm e time during the year we got either further releases against an annual agreement in the form of purchase orders. Mohawk was an existing customer.

Q Mr. Tucker, do you recall which engineers of ISL were involved in building the prototype, the one we failed to deliver by July 31st? Would Mr. Boyce be involved in building that prototype as well?

A I really do not recall.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T2

Q Do you recall who Mr. Keppel was?

A Yes.

Q He was the chief engineer? Was he a design engineer?

A Among other things.

Q So when a customer requested that a prototype be built, Mr. Keppel would be responsible for designing the product or having some engineer working under his supervision design the product? Would that be correct?

A Essentially correct.

Q Do you recall who Mr. Boyce and Mr. Ballantine were?

A Yes.

Q What kind of engineering were they involved in in connection with the building of the memory stacks?

A One was an engineer, the other was a technician. They were part of the Barbados engineering department.

Q Do you recall what specific function they performed?

A No, I don't.

Q Do you recall that they were involved with quality testing of the products that were being built in Barbados, including prototypes?

A That would be a normal engineering function.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q To the best of your knowledge, did ISL use its best efforts to attempt to build a prototype for Mohawk by July 31, 1970, if you know?

A I can only assume so.

Q You have no reason to believe that they did not attempt to do it by July 31?

A No. Well, either the first, second or third time. I know they attempted in good faith to build it the first time before July 31. I think they tried to do it the second. I don't think they had time the third.

Q By the time it came to submit the third prototype you mean there just wasn't very much time between that date and July 31, whatever that date was?

A If you recall, I testified yesterday that a prototype was not delivered to Mohawk.

Q Was never delivered?

A Until October 10.

Q Are you familiar with the Magnavox prototype which ISL was attempting to build?

A I am aware of it.

Q Do you know what progress ISL had made in building that prototype by June 9, 1970?

A I am assuming you are referring to the second prototype?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Well, how many prototypes were there?

A The first prototype we had built and submitted.

Q Do you recall?

A And the design was changed and improved. They asked us to build a second one, and that would have been the second one out of 5-piece orders that we were released for. The other 95 of the 100-piece order were on hold.

Q They were on hold until we had built the second redesigned prototype?

A Correct.

Q Do you recall when ISL had been requested by Magnavox to build the first prototype?

A No.

Q Do you have any recollection that ISL had been attempting to build that prototype from some time in 1968?

A I didn't recall that.

Q Do you have any recollection of them building that prototype during the entire year 1969?

A I can't say for the entire year of '69. I know it is a tough job. Probably for the better part of '69, yes, I guess they were working on it.

Q You said it was a tough job. Would you explain that, Mr. Tucker?

A Well, it was a memory stack, as I recall, that

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

had military specifications on it which were hard to meet, performance specifications which were hard to meet compared with the memory we were just talking about, which was only 220 bits by 16 words.

Q How big was the Magnavox prototype?

A I would have to look it up. I think it was 8K x 16. I don't recall, Mr. Maloney. I am sorry.

Q I take it that with respect to the Mohawk prototype that we have discussed today and the Varian prototype, that did not involve complying with military specifications, did it?

A No.

Q Do you recall when ISL submitted the first prototype to Magnavox? Just roughly.

A No, I don't, I am sorry.

Q Do you recall if they had submitted it prior to 1970?

A I believe they submitted it in late '69,but I am not sure.

Q Who was responsible for redesigning it? Was that at the request of Magnavox?

I will withdraw the question. It is a little confusing.

I believe you testified before that there was

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

some redesign involved. Had Magnavox changed its mind and requested a different type of prototype than the one we had submitted?

A Yes.

Q Do you recall when that redesign took place?

A No, I do not.

Q Do you have any knowledge of what is involved in complying with military specifications for such a prototype?

A There were extensive tests to be run on them and at different temperatures.

Q Do you recall whether it was possible to run those tests in Barbados?

A Yes, I believe it was.

Q Do you have any knowledge of whether or not ISL was required to develop a quality specifications manual to the satisfaction of Magnavox in connection with this order?

A I don't recall that. It was my impression that we had to deliver a complete set of testing data.

Q Mr. Tucker, I show you Defendant's Exhibit GJ in evidence. I believe you identified that yesterday as a bookings forecast which you developed at Mr. Kovar's request on or about May 24, 1970?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A That is correct.

Q Turning to the second page of that document, there is an entry for Honeywell/Lawrence, cable assemblies. It says ISL sales potential $250,000; Capture Odds 40 per cent; bookings forecast $100,000, and under Capture Month it has September, December, March and June. It says monthly rate of $2000, unit price, $5000. And then in Comments it says: Subject: quality and delivery on initial $50,000 order in house.

Now,taking the columns relating to sales potential of $250,000 over to unit price of $5, would you explain to the jury what that means in terms of projected bookings?

A Would you repeat that question, please, Mr. Maloney?

Q Well, let me withdraw the question.

A You just read it to them.

Q I will withdraw the question. Maybe it was confusing that way.

As of May 24, 1970, based on this document, would you explain to the jury the amount of bookings forecast for cable assembly work that you were projecting from Honeywell/Lawrence?

A I was projecting a second order for a hundred

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

thousand dollars as a follow-on to the $100,000 that we had in house and were half-delivered on.

Q Now, is there any way that you can tell from this document when you would be projecting that the $100,000 would be delivered? What would be the delivery period covered by this $100,000 bookings forecast?

A Well, Mr. Maloney, you are asking me to guess the customer's delivery requirements, and I have not the slightest idea. I don't know until they give you the order at what rate and how many a month they would want them delivered.

Q I realize that, Mr. Tucker. I am just asking you what you were predicting as the possible delivery dates on the documents?

A I was not predicting any delivery dates on this document, Mr. Maloney.

Q Would these figures then when it says Capture Month, Monthly Rate and Unit Price, be when you anticipated receiving the orders for the products?

A Capture the purchase order.

Q It has nothing to do with delivery?

A No, sir.

Q I am sorry. I misunderstood.

Well, could you then explain based on those

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

three columns the months in which you projected that you would be able to obtain the orders for the $100,000?

A I would say in September.

Q In September you expected to obtain an order for 2000 units at $5 per unit? Is that correct?

A The difficulty here, Mr. Maloney, is that when you introduced an item like cable assemblies into an estimate which is essentially core memories, there is no way to make it nicely fit into these column headings, so I don't think it has any meaning.

Q Well, let's leave the document aside for a moment.

A Because the problem there is that if I take the $100,000 of bookings forecast and the unit price of $5, then presumably I have got 20,000 pieces of cable harness. I can't make anything out of it. And if you take the monthly rate of 2000, then you have it over 10 months presumably.

Q Well, let's leave the document aside then and let me ask you if you have any recollection of the month in which you expected to obtain the written purchase order for the additional $100,000 of cable assembly work from Honeywell/Lawrence?

A In September.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, when it says September, December, March and June, does that refresh your recollection that perhaps the whole $100,000 order wouldn't be given at once, but they would give you partial orders in September and then an additional part in December and an additional part in March and an additional part in June?

A That was not my meaning in the case of these cable assemblies, because you recall the customer had already given us as a first order $100,000. So you would expect the second order to be at least equal, probably larger.

THE COURT: What did you mean by putting in December, March and June?

THE WITNESS: I think in this case -- I am trying to recall --

THE COURT: If you recall.

THE WITNESS: I think I was trying to say that there is a future chance we can repeat this on a quarterly basis.

THE COURT: You thought there was a possibility at that time that you might get another order for December and one for March and one for June? Is thatright?

THE WITNESS: I just took every three months through the year.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Referring to the last column"Comments; subject, quality and delivery on initial $50,000 order in house," would you explain to the jury what that meant?

A Well, it meant that if we didn't do a good job on the quality of the order that we had and/or if we didn't deliver it to the customer in a timely manner, we would not in all likelihood get the follow-on order, they wouldn't give us the order listed here.

Q Now, I believe you testified yesterday that some time in mid-June or early July Mr. Parr advised you that Plessey had decided that it would not take on any further cable assembly orders? Is that correct?

A For the Barbados plant?

Q For the Barbados plant? Now, do you recall whether by that time, mid-June or early July, you had any expectation of obtaining larger orders from Honeywell/ Lawrence than this $100,000 on your May 24 projection?

A I believe I testified yesterday that we were looking at a potential of $1,000,000 per year as being one-quarter of their total needs.

THE COURT: The answer is yes, you were looking for it?

THE WITNESS: Yes.

Q With regard to that $1,000,000 a year, do you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

have any recollection of when if you obtained such an order, deliveries under that order would have begun?

A I have no way of knowing, Mr. Maloney, because you don't get a single order for a million dollars, and even if you did, I can't guess what the delivery schedule would be called for. You get a series of orders, which when you say a million dollars a year potential, it means you could build it up to a million dollars.

Q How long would it take to build up to the point where you were manufacturing a million dollars worth of cable harness assembly work?

THE COURT: I don't understand that question.

MR. MALONEY: I will withdraw the question.

THE COURT: There is another point. I suppose it depends on how fast the customer wants the delivery.

Isn't that sort of the key problem?

THE WITNESS: Yes, your Honor.

THE COURT: Not how long it takes to manufacture it, but the customer has a schedule he wants to follow?

THE WITNESS: Yes, you would have to train people.

Q ISL would have to train people?

A Build up the plant capacity to handle a million a year, yes.

Q Were you familiar with the ISL plant in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Barbados?

A I had been there three or four times.

Q Do you know what portion of that plant was devoted to cable assembly work as of June, 1970?

A No, I don't. I do know that the second floor was almost entirely vacant, and it would be my estimation from having run a plant before that you could put fifty or a hundred people up there.

Q And have them do cable harness work?

A Just as a recollection. If I recall, the plant was only half-occupied the last time I had seen it.

THE COURT: When was that?

THE WITNESS: Well, that would have been in December that the sales conference was held in Barbados.

THE COURT: December, 1969?

THE WITNESS: December, 1969.

Q By mid-June when Mr. Parr advised you of his decision to take no further cable assembly work, do you know whether or not Honeywell/Lawrence was satisfied with ISL's quality and delivery on the initial order?

A They were not totally satisfied. I recall we were straightening out some difficulties as to quantities and materials. I would say essentially we had a reasonably satisfied customer.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Were we behind schedule in making deliveries on the initial order?

A Somewhat I think we were, a fdw weeks, perhaps.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T3 Q Mr. Tucker, I believe Mr. McConnell asked you yesterday whether or not at the time Plessey made the decision in mid-June not to take on any additional cable harness work, whether or not Plessey also cancelled the existing order from Honeywell?

MR. McCONNELL: No, I don't think I asked that. Certainly not in that form.

THE COURT: Whether he asked it or not, do you want to ask him that question?

A No, sir.

Q Excuse me?

A No, sir; I do not recall being asked the question.

MR. MALONEY: I will withdraw that question.

Q Do you recall whether or not in mid-June Plessey cancelled the existing order with Honeywell/Lawrence for cable assembly work?

A I know the balance of the order was cancelled.

Q Do you know who cancelled the order?

A I am not sure. I think Plessey initiated the

b2 cancellation.

Q Do you have any recollection --

A I have seen correspondence in which it was difficult to tell who did initiate the cancellation. It is entirely possible that Plessey asked that it be cancelled

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and then Honeywell cancelled it, but I believe Plessey initiated it as near as I could tell.

xx (Defendant's Exhibit DI marked for identification.)

Q Mr. Tucker, do you have any recollection of any discussions with Mr. Kovar about whether or not the initial cable harness order from Honeywell-Lawrence was profitable or not?

A No, I do not have any recollection.

Q I show you Defendant's Exhibit DI --

A I recall Honeywell approving the raising of some unit prices due to material price increases, but I don't know that that implies profitability or lack thereof.

Q You mean that when we originally obtained the order -- withdrawn.

Did there come a point at which ISL asked Honeywell-Lawrence to raise the prices because of an increase in the price of materials?

A I believe so. I believe when we quoted the job we found that we were under the impression or had gotten quotes at a certain level and then later on when we went to do the job we found these could not be gotten at those prices, they were higher. We went back to the customer, the customer agreed to absorb the price increases.

Q Who was supplying the materials in connection

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

with the cable harness work?

A As I recall, Mr. Maloney, Honeywell was furnishing the basic wire itself.

Q You say when we bid on the job that Honeywell had indicated to us that we could obtain the materials at a certain price and we used that price in preparing our price quotation to obtain the business?

A Yes.

Q And then we subsequently learned that we could not obtain the materials for that price or that the prices had increased?

A That's as I recall.

Q Do you recall how frequently that happened with respect to products that ISL was bidding on for orders, not just limiting it to cable harnesses?

A I don't recall any incident in the area of core memory.

Q You have no recollection of any incidents on memory stacks where we have built up a price quotation based on an erroneous quotation of what the materials would cost?

A No, nothing other than the typical routine errors that are made every once in a while in which you would have to go in to a customer and say "Look,we made

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a mathematical error in adding that column up wrong.

And he'll say, sure, that happens in our place.

That type of thing, but no major crisis in the area.

(Defendant's Exhibits DJ, DK, DL, DM, DN and DO mared for identification.)

xx

MR. McCONNELL: May I see them?

MR. MALONEY: Perhaps while Mr. McConnel is reviewing that, Mr. Tucker, I could ask some additional questions.

Q Were you a shareholder of ISL at the time Plessey acquired it?

A Yes, I was.

Q Do you recall receiving some proxy material requesting that you vote on whether or not to approve the acquisition by Plessey?

A I think I did.

Q When you received that proxy material, did you receive a copy of the contract between ISL and Plessey?

A No, I did not.

Q Mr. Tucker, do you recall whether ISL had any cable harness work during 1969?

A I believe we were finishing up a rather large order, which had run for a few years, from a company called

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Dura, D-u-r-a.

Q Do you recall whether Dura cancelled that order before ISL had completed it?

A I think they did because there were ragged ends left. What I am saying is that I think over the history of the order there had accumulated shortages and we didn't have enough of everything to put together the last few units for Dura.

Q How would those shortages have occurred?

A Just in the normal course of manufacturing parts get broken or lost.

Q Who was supplying the materials in connection with the Dura cable assembly work?

A I believe Dura was furnishing certain ones of those, the connectors especially.

Q During 1970, other than Honeywell-Lawrence, do you recall any other potential cable harness customer from which we could have obtained an order of $50,000 or more other than, perhaps, Univac, which you mentioned yesterday?

A I was going to say it was Univac at Salt Lake City and there was also Honeywell-Framingham. I forgot, there was also IBM.

Q Referring again to Defendant's Exhibit D, the sales forecast, would that be the $90,000 -- withdrawn.

Q Referring to Exhibit D, I see IBM-Canada, $90,000. Would that be the potential cable harness order to which you are referring?

b3 A Yes, it would.

Q Do you recall whether or not that was still a potential order by June 9, 1970?

A I don't believe it was because IBM cancelled the particular equipment that that cable harness was to go into so that, as far as we were concerned, the requirement disappeared. I am not sure whether it was before or after June 9th. I think it was before.

Q Mr. Tucker, getting back to Honeywell-Lawrence, I show you Defendant's Exhibit DJ for identification and I ask you if you can identify that document.

A This is a memo from Vince Huntoon in Boston to me, dated June 11, 1970, with a note on the bottom to Frank Parr.

Q Who was Vince Huntoon?

A He was our regional representative in New England.

Q Would he be the local rep who would be responsible for soliciting the cable harness work from Honeywell-Lawrence?

A Yes.

MR. MALONEY: I offer it in evidence, your Honor.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. McCONNELL: No objection.

THE COURT: It will be received.

xx (Defendant's Exhibit DJ received in evidence.)

MR. MALONEY: May I read it, your Honor?

THE COURT: Go ahead.

(Mr. Maloney read from Defendant's Exhibit DJ to the jury.)

Q Mr. Tucker, do you recall who Bill Morrison was?

A He was the purchasing agent at Honeywell-Lawrence.

Q Would he have been the gentleman responsible for deciding whether or not cable harness orders were awarded to ISL?

A He'd be one of the people.

(Mr. Maloney continued to read from Defendant's Exhibit DJ to the jury.)

Q Would that be Bill Morrison's trip to ISL, if you recall?

MR. MALONEY: Well, let me read it.

(Mr. Maloney continued to read from Defendant's Exhibit DJ to the jury.)

Q Do you recall who L. Martin was?

A I don't.

Q Do you recall what a qa survey would be?

THE COURT: Question and answer?

THE WITNESS: Quality assurance.

THE COURT: Quality assurance?

THE WITNESS: Quality assurance.

(Mr. Maloney continued to read from Defendant's Exhibit DJ in evidence to the jury.)

Q What did you mean when you said to Mr. Parr: "This is a very sad story"?

A Mr. Maloney, having read that to everyone, I was commenting on the story from Vince Huntoon, which is directly above it that you just read.

Q What did you understand Mr. Huntoon to be referring to by his remarks to you?

A That a particular person had gone down to the plant and that the plant had not been set up yet and he got a bad impression.

Q What was the date of that?

A Mr. Maloney, these internal memos like this that are written in hand, this goes on all the time in which the sales department is complaining about the manufacturing department and the quality control are complaining about production. This is not unusual.

Q No, I agree completely, Mr. Tucker. I don't think it is unusual.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q I show you Defendant's Exhibit DK for identification and I ask if you can identify that document.

A There is more than one copy of the same thing here.

Q I hope not. Yes, there appears to be --

A Two page 1's.

Q Two page 1's, all right.

A I can't identify, Mr. Maloney, because I have never seen it before.

Q Would Defendant's Exhibit DK, which is a report, dated June 8, 1970, or the memorandumhead of Honeywell interoffice correspondence from L. Martin, subject: Visit to International --

THE COURT: Wait a minute. This isn't in evidence and he said he doesn't know anything about it. What are you reading all this stuff for?

Q Mr. Tucker, would that be the report that Mr. Huntoon enclosed in his note to you on July 11, 1970?

THE COURT: Can you guess at that?

A All right.

Q Do you recall now that that is the report that Mr. Huntoon sent to you with his memo?

A No, I don't, but let's assume it is.

Q I don't think his Honor will let us do that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Do you know whether that is the report?

THE WITNESS: I don't know for sure.

THE COURT: All right.

THE WITNESS: I would have to go back into my files.

Q I show you Defendant's Exhibit DL and I ask if you can identify that document.

A A memo from Vince Huntoon to myself, dated June 12, 1970, subject: Honeywell-Lawrence.

Q Do you recall receiving that document on or about its date?

A I guess I did.

MR. MALONEY: I offer it in evidence, your Honor.

THE COURT: Any objection? You have seen this?

MR. McCONNELL: I am not sure which one this is.

MR. MALONEY: These are all the ones I showed Mr. McConnell before.

MR. McCONNELL: I know, but you showed me about ten and I don't recall.

I have no objection to this.

THE COURT: All right.

xx (Defendant's Exhibit DL received in evidence.)

MR. MALONEY: May I read parts of this, your Honor?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Sure, tell the jury before you do again the date and who it is from and who it is to, please.

MR. MALONEY: Yes, sir. Again, this appears to be another type of memorandum form, bearing the letterhead of V. J. Huntoon Associates and it is dated June 12, 1970, and it is addressed to Mr. Tucker and, again, it is signed "Vince." Subject: Honeywell-Lawrence.

(Mr. Maloney read from Defendant's Exhibit DL to the jury.)

Q Mr. Tucker, do you know what he was referring to when he said STC?

A Scientific Trading Corporation next to Kennedy Airport.

Q Was that a subsidiary of ISL?

A Yes.

Q And the Logan would be Logan Airport in Boston?

A Yes.

(Mr. Maloney continued to read from Defendant's Exhibit DL in evidence to the jury.)

Q Do you know who Mr. Huntoon was referring to when he said "when the boys hit there"? Would those be the men from Honeywell-Lawrence who had gone down to look at the plant in Barbados?

A I don't recall, Mr. Maloney. I doubt it seriously

if it would be, because, you see, they went down there first and these are men -- whoever went down there for that qa report is much lower in the Honeywell organization than the vice president and general manager that I referred to. They visited us first. They got back and sent these people down.

Q Do you have any recollection that Mr. Martin is the person who was sent by Honeywell-Lawrence down to review the cable assembly operation in Barbados?

A I'm sorry, I don't.

(Mr. Maloney continued to read from Defendant's Exhibit DL in evidence to the jury.)

Q I assume he means as soon as possible?

A I assume that is what he meant, too.

(Mr. Maloney continued to read from Defendant's Exhibit DL to the jury.)

Q Do you know what Mr. Huntoon was referring to in paragraph 2 of his June 12th memo?

A May I see paragraph 2, please? I can't add anything to what he has said and what you have read here. I don't know what he meant by it other than what he said.

MR. MALONEY: All right, that's fair enough.

Q Do you recall when ISL had obtained the initial orde for cable harnesses from Honeywell-Lawrence?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I would have to look it up.

MR. MALONEY: I believe, if I am correct and Mr. McConnell can correct me, that Mr. Kovar testified that he had obtained an order for delivery in the first six months of 1970, January through June, is that correct?

MR. McCONNELL:I don't recall what the testimony was or whether he even testified on that.

MR. MALONEY: I will withdraw that.

Q Do you have any recollection of when we received the first order for cable assemblies from Honeywell-Lawrence?

A I am sorry, I don't, Mr. Maloney. I would have to refer to my weekly reports and look it up.

Q In that document when Mr. Huntoon refers to Carol, is that Carol Launius who you mentioned in your direct testimony yesterday?

A I assume so.

Q Mr.Michalski is the Mr. Michalski to whom you referred on your direct testimony?

A Yes.

Q Does that refresh your recollection that Launius and Michalski did not go up to Honeywell-Lawrence to receive training but to straighten out all of the problems described in those two memoranda from Mr. Huntoon?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't draw that conclusion from his--

THE COURT: You don't have to draw the conclusion at all.

THE WITNESS: I don't even find it here.

THE COURT: Don't worry about that. That is not your conclusion?

THE WITNESS: Mr. Huntoon concluded by saying: "In short, they should see the production and qc at Honeywell and learn something."

I referred to this training. To me it is one and the same thing.

Q But that was the training to which you referred?

A It is the trip to which I referred.

Q You did not mean to indicate in your testimony yesterday that Mr. Launius or Mr. Michalski had received any training from Honeywell prior to June, 1970, did you?

A I did not.

Q I show you Defendant's Exhibit DN for identification, Mr. Tucker, and I ask if you can identify that document.

A I have never seen it before, Mr. Maloney.

Q Does that document refresh your recollection as to the date when the existing cable assembly harness contract was cancelled?

A The balance of the existing contract. It appears

to be late September.

THE COURT: Does that refresh your recollection not because it says so there, if you never saw it, but does that refresh your recollection that the balance was cancelled in late September?

THE WITNESS: Late September.

THE COURT: It does, all right.

Q Does Defendant's Exhibit DN for identification refresh your recollection as to who cancelled the balance of the order?

A No, it does not. I am aware that from a detailed and written point of view the only person that can cancel an order is the one that issued it in the first place, namely the customer and that is why I referred previously to who initiated the cancellation.

Q Do you know who Mr. Dick Bishop is? Do you recall whether Mr. Dick Bishop was in the purchasing department of Honeywell-Lawrence under the supervision of Mr. Morrison?

A I assume he was. I did not know Mr. Bishop personally. I knew Mr. Morrison.

Q Do you have any recollection of what the balance of the cable harness order was when it was cancelled by whomever cancelled it?

A It was my recollection that approximately 60 per

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

cent of the order had been run.

Q What was the amount of the initial order?

A It was approximately $100,000 as I recall.

Q Referring again to your I believe it is Defendant's Exhibit CJ, which you prepared on May 24, 1970, in the "comment" column you refer to initial order of $50,000. Does that refresh your recollection that the initial order was only $50,000 rather than $100,000?

A No, it does not because I believe the order was increased.

THE COURT: He asked you a couple of minutes ago, you think when they cancelled the balance they cancelled about $40,000, is that right?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

T 4

Q Mr. Tucker, I show you a copy of Plaintiff's Exhibit 51 in evidence, which is your trip report dated January 16, 1971.

Referring to the comments on Hewlett-Packard, which I believe were read yesterday, I would like to refer to a part of it, where you describe your visit to Hewlett-Packard and a conference with the people at Hewlett-Packard. You say, however, this visit revealed that we had lost about $100,000 of bookings in 1970 due to our poor performance.

Now, would you explain to what you were referring by that comment?

A I was told by Carl Steele, the purchasing agent, that we would have had -- he would have given us a certain release against our annual agreement if we had met the promises which we had given him last.

Q In other words, if we had kept up to the delivery schedule he would have given us releases for shipments of an additional $100,000 in 1970? Is that correct?

A Against the annual agreement.

Q Do you recall by June 9 the amount by which ISL was in arrears on the Hewlett-Packard contract?

A No, I do not.

MR. MALONEY: Your Honor, to shorten this --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and Mr. McConnell can correct me if I am wrong, I think when we were dealing with the shop floor program -- and my assistant can't put his hands on the exhibit number -- CT -- I think during Mr. Kovar's testimony we established that on the 30 mil stack based on this document, assuming the correctness of this document, that there were 72 in arrears on the 30 mil stack, having a value of $1200 a-piece.

THE WITNESS: What date was that, Mr. Maloney?

MR. MALONEY: That would be the first or second week in June, 1970. I think we multipied 72 times $1200 and came up with the number of $86,400 in arrears on that stack, and I think we turned to page 3 of Exhibit CT, and Mr. Kovar identified another entry for Hewlett-Packard, purchase order 22-02644, which was the 20-mil stack, indicating that there were 12 units in arrears as of that time, and assuming again the correctness of the document, we established that the price was around $700, and that $700 times 12 would be $8,400.

Now, I have added those two numbers together and come up with $94,800.

THE COURT: Did you do that with the machine?

MR. MALONEY: Yes, sir. I think I asked Mr. Gretten to verify it on the machine last night when I did

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

it, and we would be glad to recheck it and correct the record if there is any error.

Q Now, during your direct testimony, Mr. Tucker, Mr. McConnell requested you to read a series of entries from your various weekly reports concerning quality and delivery problems with Hewlett-Packard.

Now, I ask you if by the end of 1970, according to your January 16 trip report, we had lost only $100,000 of business in Hewlett-Packard for that year, and if we were already in arrears of $94,000 by June of 1970, would it be a fair statement that once Plessey took over they adhered to future delivery schedules, but were unable to catch up on those arrears?

THE COURT: Do you think you can answer that question?

THE WITNESS: I am trying to think how to.

THE COURT: I think I will give you a little while to answer it. I said I have to adjourn at 3 o'clock. I have another matter. So I will give you a chance to think that one over.

We will adjourn now until Monday morning, ladies and gentlemen, and like last Monday, I have a calendar of matters on Monday, so we will start at half-past 10, instead of 10 o'clock.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

In the meantime, I hope we all have a fine weekend. I hope this weather clears up also, although it doesn't always do so on weekends. Have a fine weekend. Do not discuss this matter at all. Thank you very much for your patience.

(Whereupon, an adjournment was taken to Monday, March 18, 1974, at 10.30 A.M.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

SCIENTIFIC HOLDING COMPANY, LTD.
vs. 72 Civ. 4040.
PLESSEY INCORPORATED.

New York, March 18, 1974;
10.30 A.M.

Trial resumed.

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(In open court; jury present.)

W I L L I A M T U C K E R, resumed.

THE COURT: Good morning, ladies and gentlemen. I hope you had a nice weekend. They say Spring is coming, but it hasn't come yet, but we can all hope for that.

All right, Mr. Maloney, you may proceed.

MR. MALONEY: Good morning, your Honor, ladies and gentlemen and Mr. Tucker.

CROSS EXAMINATION CONTINUED

BY MR. MALONEY:

Q Mr. Tucker, I show you Government's Exhibit CI for identification and I believe that is a document we discussed on Friday, which was your handwritten response to Mr. Kovar's letter, dated April 20, 1970, and attached to the letter is a copy of the 1970 sales forecast, which I believe is Defendant's Exhibit D. Referring to the second customer, Cambridge, the amount of $269,000,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I see that you have added a handwritten notation "Prototype failed."

Could you explain to his Honor and the jury what that indicates?

A Well, it means that the sample memory, which was built for the customer, did not work properly.

Q Do you recall how many prototypes we submitted to Cambridge?

A I believe this says "Third protogype failed" here.

Q By April 20, 1970, do you have any recollection of whether we still were being afforded any further opportunity by Cambridge to submit further prototypes?

A I don't recall, Mr. Maloney.

Q Going down to GE-Lynchburg, $50,000, do you recall whether or not GE ever actually requested a quotation for that order?

A I am quite sure they did.

Q Do you have any recollection of whether or not we submitted a quotation or whether or not we were able to obtain the order?

A We did not do business with them. It was a very old stack design, which was built up on stand-offs like this (indicating).

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q IBM with a little c, $90,000, "Customer requirements cancelled." I believe that was the cable harness contract we discussed on Friday?

A That is correct. That was Canada.

Q Below that is IBM Kingston. It says potential order $240,000. Do you recall whether or not ISL was ever able to obtain that order?

A We had some orders for stringing planes for IBM Kingston, but it did not amount to that much.

Q Do you recall whether or not IBM Kingston cancelled its requirements insofar as that order?

A I believe they pulled that work back in house.

Q Do you recall when that was, Mr. Tucker?

A No, I do not.

Q The next customer I see is ICC, $180,000, and across from that it says "Cancelled due to delivery." Could you explain to his Honor and the jury what that note was intended to explain?

A That was intended to explain that we did not get the large order from ICC because we had not performed in delivering previous orders.

Q Motorola, $50,000, I see it appears that someone drew a line through it. Do you recall whether or not it was you who did that?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Motorola withdrew the small computer from the market, which that memory would have gone into.

Q I guess, finally, Raytheon, $88,500, that would be the order we discussed on Friday afternoon?

A That is correct.

Q I believe one of the other customers that you testified about on your direct testimony was Standard Memories, Mr. Tucker, is that correct?

A Yes.

Q I notice on the same document, Defendant's Exhibit D, which is attached to Mr. Kovar's letter of April 20, in that document you were projecting an order of $180,000. Do you recall whether or not ISL was successful in obtaining that order?

A I testified, Mr. Maloney, that we lost that order on price by quoting .9 to 1.0 cents per bit when we had been told that the going rate was .6 to .7.

Q That was the order to which you were referring in your direct testimony?

A It is the group of orders which would add up to the $180,000.

Q Mr.Tucker, I show you Defendant's Exhibit CJ in evidence on which I believe, if I understand the document correctly, as of May 24th you were forecasting only a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

$25,000 order from Standard Memories, is that correct?

A That is correct.

Q Do you have any recollection of why you had reduced the projection from $180,000 in December, 1969, to $25,000 by May, 1970?

A I put over here in my comments, Mr. Maloney, "Relationship deteriorating."

Q Would you explain to his Honor and the jury what you meantby that comment?

A I meant that we were having -- for one thing, we were having material shortages, some of which was customer furnished. We were also having -- we had had a high reject rate on those particular types of units and as a result of the quality problem we were having some difficulties in delivery.

Q And these problems existed as of May 24, 1970, is that correct?

A Some of them did, yes.

Q With respect to the problems with customer-supplied materials that you mentioned, do you have any recollection of what the nature of that problem was?

A No, I don't recall.

Q Does it refresh your recollection that Standard Memories claimed that they had delivered more materials

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to ISL than ISL was giving them credit for in connection with manufacturing their products?

A That was the attempt to reconcile how much material they had furnished us as opposed to how much we had sent back to them. I don't believe it arose until later in the year.

Q Do you have any recollection of how much money Standard Memories owed ISL as of May, 1970?

A No, I do not.

xx (Defendant's Exhibit DP marked for identification.)

Q Mr. Tucker, I show you Defendant's Exhibit DP for identification and ask you if you can identify that document?

A It is a letter from Mr. Kovar to myself, dated May 14, 1970, regarding Standard Memories.

MR. MALONEY: I offer it in evidence, your Honor.

MR. McCONNELL: No objection.

THE COURT: It will be received.

xx (Defendant's Exhibit DP received in evidence.)

Q Mr. Tucker, does Exhibit DP refresh your recollection that Standard Memories owed ISL $50,000 as of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

May, 1970?

A Yes.

Q Mr. Tucker, do you have any recollection of whether or not Standard Memories in May and June, 1970, was also starting its own stringing operation in Barbados?

A They were not starting their own stringing operation in Barbados, Mr. Maloney. They were doing the stacking, which is the next step after we delivered the memory planes to them.

Q They would assemble the stacks themselves by putting the various planes together?

A They had about seven or eight girls, as I recall, in a building in the Town of Barbados, downtown, they would come out to the airport and they would witness the final inspection of the finished core memory planes and then they would take them downtown and they would stack the finished planes together to make stacks.

Q At their own plant in Barbados?

A At their own plant in Barbados.

Q Was that an additional factor which caused a reduction in the estimates or projections of the amount of orders that we would be able to obtain from Standard Memories?

A No, Mr. Maloney, because we built only the planes

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

for them in the first place and we continued to build the planes, and I would like to point out that you did a little cross-comparison here when you referred to my putting down $25,000 for the bookings forecast. I did so by showing $250,000 of ISL potential and saying because of the deteriorating relationship we only had a 10 per cent change to capture.

MR. MALONEY: Thank you.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mmhl Tucker-cross

T2

Q With respect to the cable harness business and Honeywell/Lawrence, do you know how many were involved in the original production order, the $100,000 that you mentioned?

A I know there were over 40, Mr. Maloney.

Q Does it refresh your recollection that there were, in fact, 160 different cables that we were making for Honeywell?

A Different individual cables?

Q Different types of cables.

A That is about right.

Q Now, I believe in your prior testimony you have indicated that the greater the quantity of the product that the customer orders, the lower the price should be, because you would build up greater efficiencies in making larger numbers or being able to obtain lower material costs?

A That is correct.

Q Would it be more efficient to build an order involving 100 of the same memory stacks than to be attempting to build 160 different types of cable harnesses?

THE COURT: That is a tough question, it seems to me.

Can you answer that question?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: I will try.

THE COURT: All right, go ahead and try it.

A The more complex theproduct, the steeper the learning curve; the simpler the product, the flatter the learning curve.

I have compared cable harnesses with core memories, because core memories are so much more complex; cable harnesses are a very simple operation in which they drive nails into a board and wrap the wire around and bundle it. So I don't think there is going to be very much learning curve in a simple product, such as cable harnesses.

Q With respect to preparing price quotations, was it more advantageous for ISL to supply the materials than to have the customer supply the materials in the terms of the amount of profit we could hope to make on the order?

A I would say that it would be more profitable to have the customer furnish the material, because what we had to sellwas the labor content; we didn't have to tie our money up by buying the material if the customer furnished to us.

Q In general terms, do you recall what the relationship of the material cost to the labor cost was in producing a particular stack?

A I would say it was just about 50-50, Mr. Maloney.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, if ISL were supplying the materials, ISL would be able to pass on a profit over and above the cost of those materials to the customer? Is that correct?

A If we lived in a cost-plus economy, Mr. Maloney.

Q Well, in preparing the price quotation do you recall what was, in fact, done in an instance where we were supplying the materials?

A I think we would take a markup on the materials.

Q Now, where the customer was supplying the materials we would not be permitted to do that? Is that correct?

A We would not be able to put any profit on the materials.

Q So in those instances the markup would be on the labor alone? Is that correct?

A The profit markup would be on the labor alone.

Q Mr. Tucker, do you recall a customer, AIL?

A Yes.

Q What was the name of that customer?

A Airborne Instruments Laboratories on Long Island.

Q Do you know who Mr. Milton Albert is?

A I believe Mr. Albert is the financial vice president.

Q He was?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Under Mr. Sinsheimer.

Q Do you have any recollection following June 9th Plessey refusing to perform the order for AIL because of the price at which that order had been taken?

A No, I do not.

Q Do you recall who the regional representative would be who would have been involved in soliciting orders from AIL?

A That would have been Mr. Greenberg, from Travco Associates.

Q I believe when we recessed Friday afternoon we had a question pending, and I think his Honor gave you the opportunity to think about that over the weekend.

THE COURT: Remind him of the question.

MR. MALONEY: Yes, sir.

Q I asked you if by the end of 1970, according to your January 16th trip report, we had lost only $100,000 of business in Hewlett Packard for that year and if we were already in arrears of $94,000 by June of 1970, would it be a fair statement that once Plessey took over they adhered to the future delivery schedules but were unable to catch up on those arrears?

A It would not be fair to say that, Mr. Maloney, because it does not take into consideration what happened

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

between those two dates.

Q What was that?

A For example, I looked over the shop reports over the weekend for the period between those two dates, and in late August, on the August 21st shop report, Plessey was 121 pieces of the 30 mill stack behind schedule and 33 pieces of the 20 mill stack behind schedule.

Using the $1,200 for the one and the $700 for the other, they were $168,000 in arrears.

Q Do you recall what the problems were with the 30 mill stack?

A Well, therewere many problems with it, Mr. Maloney.

Q I believe that is the stack that was referred to in your reports where Hewlett Packard claimed there was a 33 per cent reject rate? Is that correct?

A At one time I think that is correct.

Q That was based on the poor quality of the product which ISL was shipping to Hewlett Packard? Is that correct?

A Well, I don't know at what point in time that 33 per cent reject rate existed. I don't recall.

Q Without going into percentages --

A (Continuing) So I don't know whether it occurred before or after June 9th.

Q Without going into those percentages, do you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

recall the reason why Hewlett Packard was rejecting the stack?

A It was for quality reasons.

Q Do you have any recollection of discussing with anyone with Plessey why ISL was continuing to deliver this stack to Hewlett Packard that was not satisfying Hewlett Packard's quality standards?

A Why we were continuing delivery?

Q Yes.

A Well, because even using the figure of 1/3, which I guess it did get to one time, the other 2/3 was still being accepted.

Q But a 1/3 reject was not satisfactory to a customer like Hewlett Packard, is it?

A No.

Q Do you have any recollection of any discussion concerning the adequacy of ISL's testing equipment to test that 30 mill stack before it was shipped to Hewlett Packard?

b3 A No, I don't, Mr. Maloney.

Q Do you have any recollection?

A We discussed, I am sure, every aspect of the stack at one time, which I am sure included the test equipment.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you have any recollection that after the assumption of management control by ISL, Plessey purchased a computer from Hewlett Packard to test those facts on before they were shipped to Hewlett Packard?

A That Plessey bought a Hewlett Packard computer?

Q Yes, to test it before it shipped it to Hewlett Packard.

A I think that is right.

Q Do you have any recollection whether that cleared up the quality problems on the 30 mill stack?

A I don't recall. I am sure it helped. Quality wasn't the only problem, though, because we were twice as bad off in August as we were in April, as I mentioned.

Q Mr. Tucker, could you explain to the court and jury what a budgetary quote is, when a customer asks for a budgetary quote?

A A budgetary quote is sometimes called a preliminary quote. It sometimes has to be made up without having the detailed specifications from the customer, which may not exist. So it is a quotation, say, made on a verbal description. Generally speaking, it will almost always be higher than a firm, detailed quote.

Q Do customers sometimes ask for such budgetary quotations in order to give them some idea of whether or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

not they ought to go into actual production of that type of product?

A They could, Mr. Maloney.

Q With respect to the average amount of time that it took for you to obtain a quote from Mr. Kovar and then from Mr. Parr, would you be able to give us a figure in terms of the average amount of time and how that changed from the time Mr. Kovar left and Mr. Parr became managing director?

A I believe I mentioned that in my testimony, Mr. Maloney: it was averaging two to three weeks with Mr. Kovar and that it was averaging anywhere from four to six weeks with Mr. Parr.

Q With respect to Defendant's Exhibit D, the 1970 sales forecast, which is attached to Mr. Kovar's letter of April 20th, and with respect to Exhibit CJ, which was the bookings forecast which you prepared in May 24, 1970, at the time those documents were prepared had you foreseen the down swing or the decline in demand for products that occurred in the last six months of 1970?

A No, I had not.

Q By May of 1970 to your knowledge had anyone anticipated the extent of what that down swing would be in late 1970?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Well, I hadn't foreseen the extent of it, because as I just tried to tell you, I had not foreseen it.

Q Do you recall how long it was before business began to pick up in the industry again?

A Well, after the summer slump it began to pick up in the fall, but it did not pick all the way back up; it did not pick up as much as could be expected. That was seasonal, as I testified, Mr. Maloney.

Q Mr. Tucker, I believe youtestified that Fabritek was one of ISL's primary competitors during the measuring year -- I will withdraw the question.

Was Fabritek one of ISL's primary competitors during the measuring year?

A Well, they were one of our competitors, Mr. Maloney.

Q Do you know what business Fabritek is in?

A Well, as far as we were concerned, it was their memory division.

Q Do you have any recollection of what Fabritek's earnings were in 1969 and 1970?

A I don't think I ever knew, Mr. Maloney.

MR. MALONEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. McCONNELL:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Mr. Tucker, I believe you testified you learned some time in July of Plessey's decision to discontinue cable harness and subassembly work at the Barbados facility? Is that correct?

A That is correct.

Q Now, I believe you further testified that after you had been so advised that you met with the Honeywell people in an attempt to work out a smooth transition to Plessey's facility in Brazil? Is that also correct?

A That is correct, because the administrative assistant for Plessey's Brazil plant, a Mr. David Williams, came to the United States, met with me, and I took him around and introduced him to those customers where we had prospects. He was with me at the time that we informed Honeywell/Lawrence that the work would no longer be done in Barbados.

Q When was that?

A I think it was August, early August.

Q When did you learn that the Honeywell cable harness pilot run had been cancelled?

A I believe that was October. Cancelled for the first time or the second time? Excuse me?

Q For the first time.

A For the first time in October.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q So that would have been after Honeywell had been advised of Plessey's decision to discontinue this work at Barbados? Is that right?

A That is right.

Q Did you also learn that in connection with the cancellation of that pilot run Plessey was seeking to charge Honeywell a $10,000 cancellation charge?

A Yes, I did, Mr. McConnell.

Q In degree of importance, where would Honeywell rank among the ISL-Plessey core memory customers?

A It was our number 2 customer, Mr. McConnell.

MR. McCONNELL: That is all.

THE COURT: Any other questions?

MR. MALONEY: I have no questions.

THE COURT: You are excused. Thank you.

(Witness excused.)

MR. McCONNELL: Is Mr. Sinsheimer here?

W A R R E N J. S I N S H E I M E R, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

MR. McCONNELL: Your Honor, I am calling Mr. Sinsheimer under Rule 43 as an adverse witness.

DIRECT EXAMINATION

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

BY MR. McCONNELL:

Q Will you state your full name?

A Warren J. Sinsheimer.

Q Where do you reside, Mr. Sinsheimer?

A 22 Murray Hill Road, Scarsdale, New York.

Q What position do you hold with Plessey Incorporated?

A I am at this moment in time chairman and chief executive officer.

THE COURT: Chairman and chief executive officer? I have the impression during this trial that Plessey has British and American companies?

THE WITNESS: I interpreted the question, your Honor, to be my position with Plessey Incorporated, being the American operation.

THE COURT: That is solely the American operation?

THE WITNESS: I am a director of English Plessey, Plessey Company Limited, and at the times relevant to this trial my official position in the Plessey Company Limited was director of overseas operations and development. I was charged with the responsibility of running the whole of Plessey's facilities outside of the United Kingdom.

b4

THE COURT: That was in connection with British Plessey?

THE WITNESS: Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Was the American Plessey in existence at that time?

THE WITNESS: Yes, at that time I was president and chief executive officer of the American Plessey Company.

Q And American Plessey is a wholly owned subsidiary of the English company?

A It is.

Q Are you familiar with the matrix United States plan?

A I am familiar with a plan that was presented to the Plessey board in September --

THE COURT: Give us a year on that.

THE WITNESS: 1969 -- with respect to establishing a United States operation for the making of core memories.

THE COURT: There also has been talk during the trial that you are a lawyer.

THE WITNESS: Yes.

THE COURT: The jury and I want to know about those things. You are an attorney here in New York?

THE WITNESS: Yes, I am.

Q I show you what is in evidence as Plaintiff's Exhibit 71 and ask you if you can identify that as the September, 1969, matrix plan which you just referred to?

A I believe that it is, yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q That plan called for establishing a marketing and a prototype and a customer service facility in the United States?

A Yes, sir, it did.

Q It also contemplated that the core memory planes and stacks would be supplied from an offshore facility? Is that not correct?

A I believe that was the contemplation at the time.

Q At that time Plessey had facilities both in Malta and Lisbon?

A That is correct.

Q This plan also contemplated a 5 per cent penetration of the non-captive United States memory market?

THE COURT: Explain that a little more to the jury and myself, these words, penetration and captive. Tell us a little what you think that means.

MR. McCONNEL: I thought I would break it down.

Q Can you answer that question?

A I believe the assumption was that we would not go into the business unless we would be able to penetrate the market so that our share of the market ultimately would be at least 5 per cent.

THE COURT: By market, you mean the American market?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Yes, sir.

Q you were referring to the United States market. And can you explain the difference between captive and non-captive customers as used in the matrix plan?

A I don't know. I didn't prepare the plan, but the difference as we normally would refer to captive and non-captive customers, there are people who manufacture computers who would be normally customers to buy planes and stacks, but who have their own facilities. I think IBM has its own facility; I think it is in Lexington, Kentucky. I can be wrong. But the distinction was between the computer manufacturer who did his own manufacturing and the computer manufacturer who bought from outside sources, such as Fabritek, for example.

Q Now, did the matrix plan list as potential customers whose business you would seek Honeywell?

A I don't know, sir. I would have to look.

Q Would you refer to the third page thereof?

A Honeywell is listed under this plan as non-captive, yes.

Q Is Standard Computer also listed as a potential customer?

A Yes.

Q And Varian?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Varian Data Machines, I think it is called, yes.

MR. MALONEY: We will stipulate that all the customers on page 2 under the heading Non-Captive are listed as non-captive.

Q And Collins Radio, Raytheon, and Hewlett Packard among others also listed?

A Yes, sir.

Q Now, those were already customers of ISL, is that not the fact?

A I do not know, sir.

Q But you later learned that to be the fact?

A I have no recollection of learning that. It very well could have been.

Q Isn't it the fact, Mr. Sinsheimer, that in October of 1969 the Plessey board, the English Plessey board, actioned or directed you to implement the September, 1969, matrix plan in the United States market?

A Absolutely.

Q Now, when did you first learn that ISL was available for acquisition?

A Some time during the month of December, I believe it was, of 1969. I got a telephone call from the managing director of the Plessey Company, John Clarke, who said that he had received a phone call from an associate of his

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

who happened to be the international vice president of a company called Liscoe -- I think his name was Peter Stevens -- and that Peter Stevens told him that there was a company in Barbados going bankrupt, and if we wanted to be in a worldwide memory business we ought to contact them. That was the first that I heard of ISL.

Q Following that, did you contact Mr. Kovar of ISL?

A To be very honest, I don't remember whether I contacted him or he contacted me or I contacted my financial vice president, Mr. Albert, and asked him to contact Mr. Kovar. But, in any event, I was in contact with Mr. Kovar.

THE COURT: This was in December?

THE WITNESS: In December, sir.

Q Now, at the time -- and I am now talking about December, 1969, you knew, did you not, that starting from scratch it was going to take Plessey at least a year to break in to production in the United States memory market?

A I would think that is probably true.

Q So that if you were able to acquire a company that had already had an ongoing relationship with the customers, this would likely advance your entry in the market by approximately a year?

A I can't tell you by how much it would have

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

advanced it. It would have been a very substantial saving for us to do that, yes.

Q Do you recall having an initial discussion with Mr. Kovar at your office on or about, I believe, December 11, 1969?

A I had a discussion early in December. I can't give you the exact date from memory.

Q In that discussion did you tell Mr. Kovar that you would like to send one of Plessey's production people down to Barbados?

A I believe I did say that in that meeting, yes.

Q And did you also say that you wanted to send your financial man, Mr. Albert, down there?

A My recollection is that I did not, and my recollection is that Mr. Albert didn't go there. However, I have checked with Mr. Albert and he says my recollection is wrong, and he says he did go there. So it is highly possible that I did say to Mr. Kovar that Mr. Albert is coming.

THE COURT: That would be in December?

THE WITNESS: Yes.

Q You do know now, in fact, both the Plessey production man and Mr. Albert went to the facility at Barbados in December?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I am so advised.

Q Who was the Plessey production man?

A A man called Osborne. I don't know his first name.

THE COURT: Is he an Englishman?

THE WITNESS: Yes, sir.

Q He was a production expert, was he not?

A I believe he came from our Portuguese facility.

Q But he was a production expert, was he not?

A Yes, he was.

Q And following that visit Mr. Osborne wrote a report, did he not?

A I don't know. I'm sorry, I think I have seen that report since this litigation began.

Q I show you what has been marked Plaintiff's Exhibit 10 and ask you if you can identify that as the report of Mr. Osborne.

A It appears to be, sir.

MR. McCONNELL: I offer Plaintiff's Exhibit 10 in evidence.

MR. MALONEY: No objection.

THE COURT: It will be received.

THE CLERK: I have it marked in evidence as of March 8th.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. MALONEY: I think it is already in, but we have no objection.

MR. McCONNELL: I didn't have my copy. Mr. Wallace's memory is better than mine, so it must be in.

Q Did you have occasion to review Mr. Osborne's report on or about the time it was prepared?

A No.

Q Is it your testimony that the first time you saw this report was after this litigation?

A I don't really recall. I heard an oral version of Mr. Osborne's report. Whether it has anything to do with the written report or not, on the 19th of December, when an oral version of what he discovered in Barbados was given to the Plessey board, at which meeting I attended.

b6

THE COURT: You are listed on page 5 with a large group of people to whom this report had been sent?

THE WITNESS: Yes, but I believe, your Honor, that Mr. Osborne came back from Barbados on the 19th of December, which was the day the board of the Plessey Company was looking at this acquisition. We did receive a verbal report of Mr. Osborne's findings, and in the normal course of events that report would have been prepared afterwards. It was after the fact, and if I got it I probably didn't read it.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Was this a meeting of United States Plessey or English Plessey?

A English Plessey.

THE COURT: That was held where, sir?

THE WITNESS: In London on the 19th of December, if my recollection is correct.

Q Would there have been minutes of that meeting?

A Yes, sir.

Q Would those minutes report the substance of Mr. Osborne's report to the English Plessey board?

A I don't recall. They normally wouldn't.

Q But this report does show you on the distribution list?

A Yes, it does.

Q Now, referring to page 2 thereof, Mr. Osborne, it states the envisioned and current output orders for the year 1970 are in the hands of Mr. Milton H. Albert, a financial controller from Plessey Incorporated.

THE COURT: Where are you reading from?

MR. McCONNELL: Under the Conclusion paragraph, your Honor, next to the last sentence on page 2.

THE COURT: I see. Next to the last sentence?

MR. McCONNELL: I will start again.

Q "Mr. Osborne states, the envisaged and current

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

output of orders for the year 1970 are in the hands of Mr. Milton H. Albert a financial controller from Plessey Incorporated, who after researching the financial aspect of the company reached the same conclusion. Any negotiation that may take place would be carried out with the position that Scientific Instruments LImited is a viable proposition."

Now, did Mr. Osborne so report in his oral report to the English board?

A I don't think Mr. Osborne gave the oral report. I think that Mr. Osborne had arrived at London Airport and telephoned his boss, who was Mr. Crocker. I think Mr. Crocker came to the board meeting and in essence Mr. Crocker said that this thing looks like a viable proposition, that Osborne has been down there, he reports that the labor is reasonably good, and Crocker on that basis recommended to the board that we go ahead with the acquisition.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T3

Q By that time you had checked out the ISL order book and customers, had you not?

A No, sir; I had not.

Q Had anyone for Plessey?

A I presume Mr. -- the order book and customers? I don't think so. I don't know, but I certainly didn't.

THE COURT: At this meeting was there any discussion of how you would acquire ISL or just that you would go ahead and negotiate?

THE WITNESS: I don't recall, your Honor. I have the minutes in my briefcase back there. If you like, I will look at them. I think they may be in evidence at the trial.

I don't recall that there was a discussion of the method. I would doubt it very, very much because our procedure normally, when we acquire a company, is we decide whether to enter into serious negotiations first and the board says, "Yes, let's enter into serious negotiations," and then we go forward with it. I don't think there would be any reflection of that.

Q You say you have those minutes with you?

A I think I do in my briefcase.

MR. McCONNELL: We won't interrupt now, but at the recess break I would like to take a look at them.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: The 19th of December.

Q I show you what has been marked Plaintiff's Exhibit 80 and ask if that shows you on the distribution list or if that shows a copy going to you?

A Yes, it does.

MR. McCONNELL: I offer Plaintiff's Exhibit 80 in evidence.

THE COURT: Have you seen this?

MR. McCONNELL: This comes from Plessey's files.

MR. MALONEY: I am sure I have, your Honor. Just let me take a look at it.

THE COURT: All right.

MR. MALONEY: No objection, your Honor.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 80 received in evidence.)

Q This is a memorandum from Mr. Crocker to Mr. J.A. Clarke, is that right, under date of January 7, 1970?

A Yes, sir; that is correct.

Q Is that Sir John Clarke?

A That is John Clarke, yes, the managing director of the Plessey Company.

Q Referring to Crocker's memo:

"This is to confirm our telephone conversation

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in which I stated that having analyzed the order book of the above company, which stands at approximately 1.25 million pounds, I find it to be entirely satisfactory. 44 per cent covers work in which they purchase or provide all materials and deliver complete stacks which they sell at $5 per hour. This is almost exactly in line with our U.K. matrix business.

"83 per cent is for contract labor only, which they sell at $3 per hour.

"6 per cent is partially contract labor only and is sold at $4 per hour.

"The remainder sub-assembly work for IBM at $2.50 per hour.

"If one compares this with our own experience, we are able to profitably sell at $1.50 per hour. Therefore, it can be seen that the whole of the order book should be profitable providing their efficiencies are reasonable, which John Osborne considers to be easily achievable."

Does that refresh your recollection --

A No, sir.

Q -- that --

A I am sorry.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

op4 Sinsheimer-direct

Q -- that Plessey had ISL's customer order book in hand and had made an analysis of it?

THE COURT: You are asking him whether it refreshes his recollection that Mr. Clarke saw the order book.

MR. MALONEY: Your Honor, I have a further problem. I think Mr. Kovar testified that there was not an order book as such during his testimony.

THE COURT: That is sort of a play on words, but this indicates to you, Mr. Sinsheimer, that Mr. Clarke had obtained some information regarding the orders?

2 THE WITNESS: It appears that Mr. Crocker had seen the orders upon which I was relying in my first conversation with Mr. Kovar and I was told that there were over $3,000,000 worth or orders in house.

THE COURT: That is what Clarke reported?

THE WITNESS: That is what Crocker reported to Mr. Clarke. I have no independent knowledge of whether Mr. Crocker looked at the order book or not, but I think this speaks for itself.

THE COURT: Whether it is an order book or not, it doesn't matter, but at that time he was satisfied. All right.

Q Did you, yourself, make a report to the English

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Plessey board with reference to the possible acquisition of ISL?

A Not at this time. I did after we had had further negotiations and came up with a proposal. I think that Mr. Frey and I jointly sent a memorandum to the Plessey board.

Q Now, let's back up. Do you recall a meeting with Mr. Kovar and Mr. Shapiro at your office with you on or about December 21, 1969, and to help you on that, do you recall a discussion of price?

A Yes.

Q Do you recall that at that meeting Kovar and Shapiro were asking 2.8 million and you said that you couldn't see more than a million?

A That is precisely correct.

Q Do you recall either Shapiro or Kovar saying in substance that the 2.8 million figure would be that figure at which all investors would get out their investment?

A Yes, I think the conversation went along those lines that I said, I think it is a rediculous amount of money for anybody to ask for a bankrupt company. What is the raison d'etre? Why would anybody think of asking that kind of money?

I think they said, "That's the amount of money

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

all the investors have in and they can get out clean at 2.8 million dollars. That is my recollection.

Q It just happened that this bankrupt company fit neatly into your Matrix U.S. plan, isn't that right?

A That is right. Absolutely, otherwise I wouldn't be talking to them.

As a matter of fact, I even had discussions with Mr. Kovar personally and privately about how nicely it fit into the Matrix plan, which I think I explained in some detail to him.

Q I show you what is in evidence as Plaintiff's Exhibit 109 and ask you if you can identify that as your report to the English Plessey board on the proposed acquisition of ISL?

A Yes, it was.

Q Was that prepared by you?

A Yes, it was. Well, it was prepared by Eric Frey and I jointly. I believe it was prepared in my New York office around the date it bears, January 7, 1970.

Q Who is Mr. Frey?

A Mr. Frey was and is the director of finance of the Plessey Company, Ltd. in England. One of his reponsibilities in respect to the company in his finance function is the processing of all acquisitions and disposals of the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

op7 Sinsheimer-direct

company's business.

Q You state in part:

"The main board standing committee appointed a sub-committee consisting of the managing director, the finance director and the director of overseas operations to investigate and finalize the potential acquisition of International Scientific, Ltd., a corporation in Barbados, engaged in the manufacture of matrices and memory stacks."

Now, stopping there, the director of overseas operations would be you, is that right, Mr. Sinsheimer?

A Yes,sir.

Q And was the finance director Mr. Frey?

A Yes, sir.

Q And the managing director was who?

A John Clarke.

Q Sir John Clarke. Now, you further state:

"Briefly, this company is in dire financial straits, it having at this time either no asset value or a negative net worth. It appears that this company needs an immediate infusion of £00,000 to continue in business."

Now, is that what Mr. Albert had reported to you?

A I don't know whether it was what Mr. Albert report-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

ed to me or what Mr. Kovar told me or what Mr. Frey was able to do with his little calculator after having looked at the financial statements and Mr. Frey was with me at a meeting with Mr. Kovar, so that I really can't tell you how the number of $600,000 came up.

Q You weren't relying on Mr. Kovar, were you?

A I think we relied in this whole matter a great deal on Mr. Kovar and the numbers that he presented to us.

Q Didn't you make your own independent investigation of the financial condition of ISL and in that connection did you not send your financial man, Mr. Albert, to Barbados?

A Mr. McConnell, we sent Mr. Albert to Barbados to make a financial evaluation, but we did not do the kind of accounting tests that Certified Public Accountants do. We didn't confirm receivables and to a great extent we were relying on what we were given and what we were told by Mr. Kovar and, in fact, I think we insisted in certain representations about the financial state of the company in the contract.

Q You further state:

"The memory division of the components group ..."

Stopping there for a minute, was that the memory division of the English components group?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, sir.

Q Who headed the English components group?

A A man called George Doust.

Q Mr. Crocker headed the memory division of that group, is that right?

A That is right.

Q You state:

"The memory division of the components group strongly urge the acquisition of this company as a base for our North American Matrix operation, which has heretofore been approved by the board."

That was your recommendation at the time?

A Yes, sir.

Q And the North American Matrix operation that you are referring to is the same 1969 Matrix plan, is that right?

A No, I think there is a lot of confusion about that. The board agreed in substance to start an American operation. It had this plan before us as a document upon which it could make up its mind. Here are the customers, these are our plans for penetration, but it didn't approve that specific plan.

It approved, and the minutes I believe will indicate the fact, that we should start a North American

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

operation.

THE COURT: All right, we will take our morning recess now. You may be excused for a few minutes, ladies and gentlemen.

(Recess.)

(In open court; jury present.)

THE COURT: Proceed, Mr. McConnell.

BY MR. McCONNELL:

Q You state in your report to the board that the acquisition of ISL will provide the base for our North American Matrix operation, which has heretofore been approved by the board, is that right?

A Yes, sir.

Q The matrix operation that heretofore had been approved the board and which you were instructed to implement was the 1969 matrix plan, is that not the fact?

A Not specifically, no. The plan was before the board and the plan, the concept generally of having a matrix operation in the United States was approved, but the specifics of the plan were to be implemented by myself and I did not feel then nor now that I was constrained to act within the four corners of that document.

Q Referring again to Plaintiff's Exhibit 109, which is the minute of the English Plessey board for October,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and which states:

"A brochure was submitted, September 26, 1969, setting out proposals for the manufacture of matrix products in the U.S.A., approval in principle was given to the proposal subject to the working out of a detailed plan for which Mr. Sinsheimer would be responsible in conjunction with Mr. Michael Clarke."

Now, the brochure that is referred to is the matrix plan, is it not?

A Yes.

MR. MALONEY: Your Honor, I don't think that document has been marked for identification or offered in evidence. I believe we should do that since it has been read into the record.

MR. McCONNELL: I am sorry, I thought I had.

THE COURT: I don't think it has been, no. That is 108?

MR. McCONNELL: 108. No, it hasn't.

xx (Plaintiff's Exhibit 108 received in evidence.)

Q Now, after your report did the English Plessey board authorize you to go ahead with the acquisition?

A Yes, they did.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q On the terms outlined therein?

A Yes, they did.

Q Did Mr. Albert go down to the Barbados facility again in January?

A That I do not know. My recollection was that he did go down in connection with the sale of a house. I wouldn't know whether that would be January or February. I think it must have been February because I don't think the board approved our buying this house until either very late in January or very early in February, but again I could be mistaken. I just don't recall the dates.

Q In any event, whether it is late January or early February, Albert did go again to Barbados?

A I believe he did, yes.

Q Did Mr. Crocker also go to Barbados?

A At what time, Mr. McConnell?

Q In February.

A He may have. I just don't remember. I have no recollection. He very well could have.

Q Did Mr. Clarke also go to Barbados?

A Oh, yes. Now you have refreshed my recollection. Both Clarke and Crocker went to Barbados in either the second or third week of February. I think they returned back to New York, if I am not mistaken, on

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

February 19th, if that is the trip you are talking about.

Q And they prepared a report in connection with that visit, did they not?

A They did, yes.

Q You were on the distribution?

A Yes, sir.

Q By that time [Feb. 19] you knew exactly how desperate ISL's financial condition was, did you not?

A Well, I knew that the situation in Barbados was desperate financially because Mr. Kovar had indicated that in order to have working capital until we closed this deal, he would have to sell the house, which he used as a residence, and I believe that we agreed to buy that house at the price that his purchaser was willing to pay in order to provide funds to keep the business going, even though we hadn't signed a contract to buy that house yet.

Q Those funds were just sufficient to keep the business going until the proposed closing on March 2, isn't that right?

A So I believe.

Q Do you know how many days Mr. Crocker and Mr. Clarke spent at Barbados in February?

A I think they spent two, three or four. I think it was probably from Monday through Thursday.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Following that visit do you recall whether or not their report was favorable or unfavorable so far as the acquisition of ISL?

A Well, I presume that it was favorable because had it been -- my recollection was that it was favorable, yes.

Q I show you Plaintiff's Exhibit 11, which is in evidence, which is Mr. Crocker's report of his February trip with Mr. Clarke, and ask you if you received that at or about that time?

A Yes, I did. May I have the last part of the question, on or about which time?

Q At or about that time. The date of the report is February 25th.

A I received it on the 5th of March.

Q What is it that indicates to you that you received it on the 5th of March?

A I had a letter of transmittal with a date stamp from my office March 5, which was done in the normal course of our business.

Q Referring to page 1 thereof, Mr. Crocker states in part, does he not:

"A Matrix U.S.A. plan was put before the board in September, 1969."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Now, that is the same matrix plan that we have been talking about, is it not?

A That is correct.

Q "Since that time an opportunity has arisen to purchase a Barbados-based core weaving assembly and engineering company known as International Scientific, Ltd. with an existing agency sales force in the United States. The objective of this report is to propose the integration of International Scientific, Ltd. with the Matrix U.S.A. business plan to form a virtually independent and total facility in the core memory stack business. The proposal does not include the manufacture of ferrite cores. The objective will be as the U.S. A. Matrix plan, namely, to achieve a penetration of 5 per cent of the available U.S. memory stack market, i.e., sales of over 2 million pounds in 1973-74."

Which would be 4 million 8 U.S., right?

A Yes, sir, roughly. 4 million 6.

Q "The acquisition of International Scientific, Ltd. will provide us with an opportunity to reach our original target more quickly."

Were you in agreement with those comments of Mr. Crocker?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Oh, yes; absolutely.

Q Turning to page 3, Mr. Crocker further states under the heading of "Proposed Reorganization."

"The memory division of Plessey, Inc. will be under the direction of a general manager controlling the Long Island and Barbados operations. In view of the nature of the contract with ISL it is proposed that Mr. A. Kovar be made acting general manager with the clear understanding that during the first 12 months a permanent and more competent general manager will be appointed at any time. The Long Island facility will be run by a marketing manager responsible for the direction of the agents and the building up of amenable minimal in-house sales force. He will also control a customer engineering capability covering test, repair, service and outline design."

Were you in agreement with those comments?

A No, not necessarily.

THE COURT: What is the Long Island facility?

THE WITNESS: Your Honor, we had at that time a facility in Farmingdale, Long Island. When the board gave its authorization to go ahead with the matrix program, we recruited a very small team of two people and they were at that facility in Long Island and the intention was in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

building up the business to have an engineering and repair facility in Long Island. That was the intention.

The part that I wasn't in agreement with was the question of Mr. Kovar because I had had a discussion with Mr. Kovar about his future and I asked him whether he wanted to be a lawyer or a businessman in the future and I outlined the total plans for the company in the memory business and I said did he want to be considered part of it and he said he did on a permanent basis and at that particular time I wasn't prepared to make a determination as to whether Mr. Kovar was going to have that job or not have it.

Q Under your contract with ISL, ISL management was to remain in control of the business during the measuring year; is that right?

A Absolutely. Crocker's point, though, is quite simple. Crocker's point is in that measuring year we should recruit a permanent guy to run it because he didn't have confidence that Mr. Kovar had the ability to do it. I wasn't prepared to pass judgment.

Q Crocker wanted the arrangement to be that Kovar couldbe dismissed at any time during the 12-month period, isn't that right?

A After or before the contract was signed?

Q This is after the contract was signed but

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

before the closing?

A No, that is not what this says, Mr. McConnell.

Q That is not what this says?

A No, it is not what it says nor what I believe Crocker believed because I had several conversations with Crocker, who fully understood the company's obligation under the contract.

Q Mr. Crocker also said --

THE COURT: Let me just sort of straighten this out in my mind. This memorandum, I know, isn't yours. It suggests that Kovar be made acting general manager with a clear understanding that during the first 12 months a permanent and more competent general manager be appointed at any time.

THE WITNESS: My understanding of this, your Honor, was that Mr. Crocker believed that this business had to be run by a competent businessman and not a lawyer turned businessman like me.

THE COURT: Like you?

THE WITNESS: Like me, yes.

THE COURT: There seem to be an awful lot of those, ladies and gentlemen.

THE WITNESS: His feeling was that in the year that we had, his oral conversations with me indicated that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in the year that we had where we had an obligation to leave ISL management in, we should be recruiting a permanent man to put in there at the end of the measuring year.

THE COURT: Is that what he says?

THE WITNESS: I really don't know what it says, your Honor. I don't know what the author meant, but certainly it is not my understanding of what Mr.Crocker meant.

THE COURT: He said that a permanent more competent general manager be appointed at any time. I don't what a businessman would understand, but qua lawyer would indicate that the Plessey could appoint a general manager at any time?

THE WITNESS: I think in point of fact what Crocker probably had in mind was that we could appoint a general manager, but whether he would take over the general manager of that facility before the end of the measuring year, I don't think that Crocker even thought about, because Crocker, I don't believe, was looking at this as a lawyer at all because Mr. Crocker was not one of us lawyer-turned businessmen for all types.

THE COURT: Anyway, you have given your version on that. Probably Crocker qua businessman didn't have much to do with working out the details of the contract, did he?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Your Honor, he had nothing to do with working out the details of the contract and I am not even sure that Crocker ever had a copy of the contract. He may have, but I really don't know and I had no specific discussion with Crocker except on the fact that we had to let these people run it as long as they were running it properly for a year's time.

Q I show you in that connection Plaintiff's Exhibit 111 --

MR. MALONEY: Your Honor, I believe that is the document with the big blue cover.

MR. McCONNELL: This is the one I have and I have only one copy.

MR. MALONEY: I would like to have this one marked because I believe this is the one we obtained from Mr. Sinsheimer's file and I believe it may be important that that particular document be the one in evidence.

THE COURT: This is my copy. You can do anything you want with it.

MR. MALONEY: We can make another copy overnight.

Q I show you what is in evidence as Plaintiff's Exhibit 111 and ask you if you can identify that as the joint report of Messrs. Clarke and Crocker on the proposed

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

acquisition of ISL under date of February 18, 1970?

A Yes.

Q Now, that report has attached to it, does it not, a copy of the final contract, purchase contract with ISL?

A Excuse me, your Honor. I am sorry, excuse me, Mr. McConnell. This date of February 18 purports to be a report of a meeting had with the British High Commissioner. It does not purport to be any more than that on that date.

Q Doesn't that same page also show distribution to a number of people including yourself?

A Yes, it does.

Q Didn't that indicate to you that that is indeed the date of the report?

A No, sir.

Q It doesn't?

A I know as a fact that it is not.

Q Does that report, whatever its date, have attached to it a copy of thefinal contract with ISL?

A Yes, it does.

Q Referring again to Crocker's report, his own personal report of February 25, Plaintiff's Exhibit 111, would you refer to the note at the bottom of page 3?

A Yes.

Q What does that say?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A It says, "This plan shall be read in conjunction with the report of the proposed acquisition of ISL."

Q Stopping there, sir, isn't that the report I just showed you, Plaintiff's Exhibit 111?

A Yes, it is.

Q So that would indicate that at least by February 25 when Crocker is writing that there should be a clear understanding that Kovar can be sacked or discharged at any time,that he had already prepared this report on the proposed acquisition, Plaintiff's Exhibit 111, which had attached to it a copy of the contract?

A No, sir; it does not.

Q It does not?

A I do not know as a factthat the report which was prepared by Clarke and Crocker in Farmingdale, New York, had attached to it at the time it was prepared any of the appendices because they do not appear to be referred to, if my recollection is correct. It may very well may be that Crocker --

Q I show you the index to Plaintiff's Exhibit 11 and ask you if that does not show as one of the attachments --

A It does.

Q The contract of February 4?

A It does.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Now, having seen that, would you not agree that when Crocker wrote his February 25th report and said there should be a clear understanding that Kovar can be discharged at any time during the 12-month period that he had already prepared the earlier report on the proposed acquisition of ISL, Plaintiff's Exhibit 111?

A He may very well have.

Q Which had attached to it a copy of the contract?

A I don't know what it had attached to it. He may very well have. I don't know, because I didn't prepare these documents.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T4

THE COURT: He doesn't know. No use to keep repeating. You are repeating it, and he doesn't know. He doesn't know whether this fellow read the contract, anyway.

THE WITNESS: No, your Honor.

Q Do you recall that there was an amendment to the contract on March 2nd?

A In Barbados?

Q Yes.

A Yes, sir.

Q Do you recall that one of the amendments was to provide that ISL would put in the business $800,000, rather than $600,000, but that as to that additional $200,000 -- did I say ISL -- let's start over again --

Do you recall one of the amendments at the closing on March 2nd --

THE COURT: Were you at the closing?

THE WITNESS: No, sir.

THE COURT: You weren't there?

THE WITNESS: No, sir, I was in New York.

Q But Mr. Albert was in telephonic contact with you?

A Constantly.

Q Do you recall that one of the amendments at the March 2nd closing was that Plessey would put in the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

business $800,000, rather than $600,000 but as to the additional $200,000 ISL was to be charged the cost thereof?

A Yes.

Q And that was to be at 10 per cent?

A I believe so.

Q Or, in other words, $20,000?

A My understanding was they were to be charged with it, but in computing the profits for the measuring year they would be presumed to pay that much on the money yes, that is essentially correct.

Q Do you recall Mr. Albert's reason for demanding that change was that --

THE COURT: I think I would like to cover that. This is what Mr. Albert and Mr. Sinsheimer were doing on the telephone? I think I would like to question.

Did Albert indicate to you over the telephone why he wanted this amendment, the extra $200,000?

THE WITNESS: Well, your Honor, the way it happened was a little bit different than that, if I may.

THE COURT: That is what I wanted to get at.

THE WITNESS: Mr. Albert called me and told me that this business had lost more money last year than I had been led to believe, the financial statements, the documents that I had in my possession showed at the time

we signed the contract.

He also told me that the month of February was a disaster, to use his words, in terms of profit and loss, and by this time I was a little bit fed up, I was angry, and I told him to forget the whole deal and come home, and I hung up the telephone.

He then called back -- I don't know how many minutes or hours later -- and started to say to me, "Well, why don't we close it; we have gone this far." He said, "Look, we are going to have to put more money in; we are going to have to put at least $200,000 more in to cover the extra $200,000 loss that I didn't know before I got here," said Mr. Albert. "If I charge them interest on it at 10 per cent and deduct that and get the full payout, instead of making $360,000 profit, they would have to make $380,000." That is how that arose.

Q And the gist of what Mr. Albert was reporting to you, he was finding out for the first time that the business in '69 had lost approximately $400,000, rather than the anticipated $200,000? Isn't that it?

A That is correct.

Q I direct your attention again to Plaintiff's Exhibit 111, which is the report on the proposed acquisition of ISL Barbados, and ask you if that has included in it

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a statement of profit and loss for the year 1969 for ISL?

A It does.

Q Have you recently read this document in preparation for your testimony?

A Yes, I have, yesterday.

Q And that shows the loss for the year for ISL was $395,000?

A That is correct.

Q Is it your position that Mr. Albert didn't have this information in advance of going to the closing?

A I know as a fact he didn't, because I didn't.

Q Again referring to the page which has the typed signatures of Clarke and Crocker and which is dated February 18, 1970, who are the people who are shown on the distribution?

A M.W. Clark, W.J. Sinsheimer, G.H. Doust, S. Dubin, M. Albert, N.J. Crocker, D.G. Clark.

Q And the Clarke is your Mr. Clarke?

A Which?

Q With the United States company? There are two of them here? The one that got two copies.

A D.G. Clarke of the United States company.

Q He has an E on the end of his name, and he is with the United States company?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q He was there with Crocker?

A Yes.

Q And must have been there on the 18th?

A He was there on the 18th and 19th.

Q And notwithstanding the fact that you are shown on the distribution list and Albert is shown on the distribution list and this page bears the date February 18, 1970, and the report itself is referred to in Crocker's February 25th report, it is your testimony that you didn't have any of this information at the time of the closing?

A It is my testimony that this was received in my office on March 5th.

Q So that the right hand didn't know what the left hand was doing?

A If that is the way you want to characterize it, Mr. McConnell.

Q I show you Plaintiff's Exhibit 110, which is in evidence, which are the minutes of the meeting of the board of directors of the English Plessey under date of February 27, 1970.

I ask you if you have ever seen a copy of that before?

A Yes, I have.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And, in fact, although you weren't in attendance, you are shown as the man who is to action the matters referred to? Is that right?

A No. One of the actions referred to. I believe-- I won't argue with you, Mr. McConnell. I am referred to as the action.

Q Now, under the heading of Barbados, Plaintiff's Exhibit 110 states Mr. Frey reported that it was hoped to sign the final agreement very shortly. The prospects for Barbados were better than originally envisaged, but it has been necessary to make the following changes in the proposals previously approved by the board: 1, the working capital to be immediately provided was now likely to be in the region of $800,000.

Now, does that refresh your recollection?

A Oh, yes.

Q That prior to the closing Plessey already knew that it was going to take $800,000, rather than $600,000 --

A Mr. McConnell --

b2 Q -- to put this ship afloat?

A Your question to me was whether I knew or Milton Albert knew? Neither of us knew. Erik Frey knew and made a report to a board meeting at which I was not in attendance.

Q So your testimony is Erik Frey knew, the English

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

board knew, but you and Mr. Albert did not know?

THE COURT: I suppose the question really is, isn't it, whether you knew it or not, Plessey knew on February 27th that they could have to put up $800,000, instead of the original $600,000?

THE WITNESS: Yes, sir.

THE COURT: Plessey knew that?

THE WITNESS: On the Friday before the Monday closing, yes.

Q Notwithstanding that, Mr. Frey reports that the acquisition is even better than envisaged, doesn't he?

THE COURT: The document speaks for itself. I don't think you need to ask Mr. Sinsheimer what that means.

Q I show you what has been marked Plaintiff's Exhibit 12 and ask you if you can identify what that is.

A It appears to be a report prepared by Mr. Kinkof.

Q At that time who was Mr. Kinkof?

A I think he was the marketing manager that we had at Farmingdale in a sort of matrix United States operation. He was the marketing man, I guess.

MR. McCONNELL: I offer Plaintiff's Exhibit 12 in evidence.

MR. MALONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 12 received in evidence.)

Q The date of this report is March 17, 1970? Is that right?

A Yes.

Q Referring to the first part, Kinkof states in part:

"This proposal outlines a plan for the initial 12 months phase of operations covering the sales, engineering design, production and customer support of memory products sold in the USA market by the joint Plessey Electronics-ISL organizations. It is formulated to be consistent with the provisions of the recent Plessey/ISL acquisition agreement.

"Two distinct phases are involved.

"(a) Short range - the 'measuring year'. This will run through approximately 30 April 1971 and is based upon continuation of ISL operations in most instances as they are presently handled with the addition of support from Plessey Electronics as requested or were considered necessary to meet objectives.

"(b) Long range - the time beyond the 'measuring year' when Plessey Electronics Corporation shall have met the terms of the agreement and have complete freedom

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to organize, manage and operate Barbados and associated U.S. memory facilities as it chooses. In this phase, key functions are planned to be located as follows --"

And then he goes on.

Did you agree with Mr. Kinkof's characterization of this?

A No, sir, I don't believe I saw this document until this litigation began.

Q Now, Kinkof was one of the co-authors of the matrix plan, was it not?

A Yes, he was.

Q Do you recall that in May of 1970 Mr. Crocker and Mr. Clarke, along with Mr. Kovar, attended the spring joint computer conference at Atlantic City?

A Yes.

Q Do you recall either Mr. Clarke or Mr. Crocker, or both, reporting to you on the subject of their conversations with Kovar following their return from that conference at Barbados?

A I don't recall whether they specifically talked about their conversation with Mr. Kovar; they certainly reported to me on the sum and substance of what was going on in Barbados and how it was being managed, yes.

Q Did both of them report to you?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I can't recall. My diary does indicate a meeting with Crocker and Clarke, so I presume they both came in and talked to me about it.

Q Well, didn't both Crocker and Clarke tell you that they tried to get Kovar to agree to certain changes they wanted to make in the Barbados operation and that he had balked at this?

A Not in those words, no.

Q Didn't they tell you that they wanted Kovar to agree to transfer all marketing responsibility, including pricing, to Parr and that Kovar had objected to this?

A That could have been part of the general discussion we had, yes.

Q Didn't Clarke and Crocker tell you that they wanted Kovar to agree to Hewitt having complete control of production and to agree to changing the ISL facility at Barbados into essentially an assembly type operation?

A No, they did not. They did tell me that they had been down there and that Peter Hewitt said the place was a disaster from the production point of view, that it could never work, that all of the changes that he had suggested had been vetoed by Mr. Kovar. He gave Don Clarke, or Don Clarke told me Peter Hewitt's reaction to Mr. Kovar as a manager, and this was some time, I guess, in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the middle of May. That was the essence of the conversation.

Q Have you finished?

A Yes.

Q Didn't Clarke and Crocker also tell you that they had asked Kovar to agree to the transfer of customer service and repair, customer design, prototype, and engineering, as well as marketing, to a facility to be established at Boston, Maynard?

A I don't know whether he said he disagreed because, frankly, all of these things that you are talking about were contained in a letter that Mr. Kovar wrote to me recommending the way we should run the business. So I don't know whether it is that letter I am thinking of or what they told me, but there could have been that kind of a conversation, yes.

Q Did they report to you that Kovar had said that he could not agree to these things because necessarily they were going to depress profits short term and that while they might make sense to Plessey long range as a matter of business, that he had an obligation under the contract to maximize profits during the measuring year?

A They may have said that to me. I can't be positive of that.

Q Did they also report to you that Kovar had said

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that if Plessey had wanted to go ahead and make these changes, but was willing to pay off at the end of the measuring year the full amount, that he, Kovar, had no objection?

b3 A Oh, that I recall, yes.

Q Didn't Clarke and Crocker further report to you that Kovar was a stubborn man, that he was not going to take their direction, and that he was not going to do whatever you asked him to do so far as the management of that business?

A I am not sure whether they used the words stubborn or whether they used a different word having to do with his ability, rather than frame of mind.

Q Didn't they recommend to you that Kovar be gotten rid of just as soon as possible and that Plessey take over the management of this company?

A No.

Q Didn't they, in fact, within a matter of ten days following the discussions at the spring conference, and later at Barbados in May, lay down plans for the takeover of management at Barbados and the firing of Kovar?

A No, not the firing of Kovar.

Q I show you what is in evidence as Plaintiff's Exhibit 20, which purports to be a memorandum by Mr. Clarke

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

under date of May 25th and which is entitled "Action arising out of meetings held at Towcester May 20th and Strowger House, May 22, 1970"? Those would both be locations in England? Is that right?

A Yes, sir.

Q I ask you who is shown on the distribution?

A I am, and I did get a copy.

Q Would you refer to the second paragraph thereof:

"The date of the takeover from Allan Kovar should be as early in June as possible and this date will be dependent upon arrangements to be made by W.J. Sinsheimer. Gretton and other people involved in the take-over will be available for movement effective June 7, 1970."

Is it your testimony that you did not understand that to contemplate the firing of Kovar?

A No. I think I better explain that, Mr. McConnell. I had made a judgment that if we could take this business over in June, we would. I had not made a judgment that I would fire Kovar or keep Kovar on in some capacity not as general manager of memories. I had made a judgment that if this business did not live up to its contractual requirements to make a profit of $15,000 in May, we would, in fact, take it over.

Q Where does the contract say they had to make a

profit of $15,000 in May?

A Would you like my legal interpretation?

THE COURT: Show him the contract.

THE WITNESS: I believe the words are --

THE COURT: Don't guess at the words. You better look at it.

MR. McCONNELL: Do you want to refer to the contract as amended by the March 2nd amendment, Plaintiff's Exhibit 5?

THE WITNESS: "It is hereby further modified so if the profits of ISL commencing May 1, 1970, average less than $15,000 per month -- "

Q That is an average. Is it your position that you can average one month?

A It is my position that I instructed the draftsman to allow me to take over the business if they did not make $15,000.

THE COURT: That is not the question. Don't read it as a lawyer. We had another layman who testified-- what was his name -- Carlen. Let's get a layman's interpretation of that.

THE WITNESS: Your Honor, I don't think that I can interpret a word without reference to why the word got in there, how it got in there, and the antecedents of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the discussion leading to it.

THE COURT: In other words, you have a special interpretation of "average"?

THE WITNESS: No, sir. If Hank Aaron gets up in the first inning and hits a home run and has not another hit after that, his average is 1,000.

THE COURT: Suppose Aaron was told that beginning May 1st if the average is less than five home runs per month is going to be cut?

THE WITNESS: I believe he would have to hit five in May.

THE COURT: You think then if he hadn't hit five in May, although he might hit ten in June that would not do it?

THE WITNESS: Yes, sir.

MR. MALONEY: Excuse me. I thought we were going to give Mr. Sinsheimer the opportunity of explaining what the word average mea nt in the context.

THE COURT: You will get a chance to do that. All he wants him to say is how he interprets the word.

THE WITNESS: I interpret the word, your Honor, to mean "at the rate of."

THE COURT: At the rate of.

THE WITNESS: At the rate of, which I believe is

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

my interpretation of it.

Q Now, isn't it a fact that at the time these plans were being discussed on May 20th and May 22nd, Clarke or Crocker had already made arrangements with Plessey for Mr. Gretton to come to Barbados as manager of the plant?

A No, sir. On my instructions Clarke and Crocker was to put together a total timetable for the Plessey taking over of the Barbados operation if we had the right to do it at the end of May, but we would not have the right to do it unless they made a profit of less than $15,000. I was of the opinion that they were going to make less than $15,000, because we, in fact, checked the sales in the middle of May in Barbados and there was no way in my judgment that they could have made it.

So what Clarke was instructing to do was to go and make a plan so that on the day he determined to do it everybody would be ready to move and in that respect he had made an arrangement with Mr. Gretton which was certainly conditioned upon the takeover.

Q Well, he states, "Mr. D.Gretton is to join International Scientific (1970) Ltd., as manager in charge of operations at a salary of $17,500 U.S. plus a company car and current benefits available to staff in Barbados."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Now, is it your testimony that that arrangement with Gretton was contingent?

A I believe it was. I believe the whole document, if you read the document on the four corners, is contingent upon my giving the go ahead to take over the operation on behalf of the Plessey Company, yes.

b4

Q The document further states, paragraph 4:

"Frank Parr to be available in Barbados at the time of the takeover to completely review all outstanding commitments, pricing policy and set up the necessary procedure for the future handling of existing orders, new inquiries, and customer liaison."

I take it Parr was to be part of this time, this takeover team, that was to go to Barbados?

A Well, to go to Barbados not permanently. I think what the reasoning behind that is once you take over an operation you have not had complete day to day control of, you got to have financial people there, marketing people the e, manufacturing people there, and you got to get your new general management there.

Q And these takeover plans which you say were contingent, also contemplated that Mr. Lewis would go to Barbados?

A I can't recall who Mr. Lewis is.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q See if I can refresh your recollection.

THE COURT: He was another lawyer?

THE WITNESS: Oh, I am sorry.

MR. McCONNELL: Lewis is not a lawyer.

THE WITNESS: I think this was another Lewis.

MR. McCONNELL: This is not Julius Lewis; this is somebody from English Plessey.

Q Reading from paragraph 5, "The components group have indicated that W. Sweeney and M. Lewis should also be on hand in Barbados at the time of the takeover."

Do you recall who W. Sweeney is?

A Sweeney was the controller of the memory operation in Towcester. I don't really have any recollection of who Mr. Lewis was.

Q Wasn't Lewis a production man?

A I don't really know.

Q "Sweeney to review the financial control and insure that this is in keeping with Plessey policy and also based on the Portugal and Malta operations, also to assist Frank Parr in the necessary cost structure so that selling prices can be calculated."

Now, it was contemplated that this takeover group was going to take up with a new selling price of its own? Isn't that right?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I would presume so, yes.

Q "M. Lewis, who is responsible for production layouts and components and work load, to review the Barbados production facility and produce a proposal as to how to best lay out the production floor plan to insure smoother work flow and the ability to employ more operators in the existing floor space."

Does that refresh your recollection that Mr. Lewis was a production man?

A I don't doubt it at all. I never met Mr. Lewis and the name just doesn't ring a bell.

Q So it was contemplated that this takeover team which you say was contingent would consist of Mr. Gretton, Mr. Parr, marketing manager, Mr. Lewis, production man apparently, and Mr. Sweeney, a financial man? Is that right?

A It depends what you mean by takeover team. This would be the team of people that would go down there in the first instance and get the thing straightened out. Most of them were not going to stay there. Parr was not going to stay there, and Gretton was to take over. This to me was an advisory team, to get down there and put this thing on even keel so we could get it moving.

Q Continuing he states it was contemplated that after the takeover team arrived and had been there for

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

some time, that then Clarke and Crocker would arrive on the scene? Isn'tthat right?

A I would think so, yes. I don't have that document in front of me.

THE COURT: Have you got a copy for the witness?

MR. McCONNELL: No, I don't believe we have.

MR. MALONEY: I will give him mine. I have read mine.

THE COURT: I would like him to have a copy so he can follow it.

Q Paragraph 6 reads:

"At the end of the two-week changeover and review period, D.G. Clarke and N. Crocker to visit Barbados and it is suggested that Milton Albert should also be available at that time. This visit will be to completely review the action taken over the previous two weeks and to finalize the future planning and operation of the Barbados facility both from a production viewpoint and commercial so far as orders, new inquiries, and product range are concerned."

Do you recall that following the takeover, if, indeed, there was a takeover, that there was going to be discussion of what the product ranges for this business was to be in the future?

A That is what Mr. Clarke's report says, and I

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

presume that I have a recollection of it. I got a copy of the reporter.

THE COURT: I think maybe we will take our luncheon break now and meet again at 2 o'clock.

Ladies and gentlemen, you are excused until 2 o'clock. Thank you very much.

(Luncheon recess)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

rgh 1 Sinsheimer-direct

AFTERNOON SESSION

2 P.M.

W A R R E N J. S I N S H E I M E R, resumed.

(Jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

DIRECT EXAMINATION CONTINUED

BY MR. McCONNELL:

Q All right, Mr. Sinsheimer, have you got Clarke's May 25th memorandum in front of you? It is Exhibit 20.

THE COURT: This is Exhibit 20?

MR. McCONNELL: Yes.

A No, sir, I don't think so. At least I don't find it.

MR. McCONNELL: I think the court reporter took a copy from up there.

(Pause.)

Q All right, now, referring to paragraph 7, Clarke says, "It is agreed that following the takeover, all marketing in North America will come under the control of Frank Parr, assisted by J. McNamara for engineering design support with customers."

Now, that's what Clarke and Crocker was asking for Kovar to agree to when they were down in Barbados early in May, isn't it?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't know.

Q You don't know.

Paragraph 8 says, "The next step is for the finalization of the Boston location and the establishing of a service and test facility together with a sales office."

Now, that also was what Clarke and Crocker were asking Kovar to agree to when they were down in Barbados earlier in May, isn't it?

A I don't know. It could have been, Mr. McConnell. It could have been, but I really don't know.

Q Referring to paragraph 9, "Originally it had been agreed that engineer N. Boyce from Barbados should visit Towcester for training under Allan Jones and that industrial engineer should be loaned from Towcester to Barbados for a period of six months. This arrangement was initially entered into on the understanding that Allan Kovar would be running the facility for the measuring year. In view of the action now agreed upon, the above should be reviewed after Gretton has settled and it then be decided as to whether it is necessary for these steps to be taken."

Is it still your position and testimony that there was no agreement on takeover and that this was just

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a contingency plan?

A This plan was a plan that I asked Clarke to come up with for the takeover of the ISL business if, as and when we had the right to do it in June. It was my firm opinion at the time I asked for this plan, and that opinion was concurred in by my controller, that that right would arise in June. That was the only thing that was agreed on, and that's what these words mean.

Q Paragraph 10 reads, "D.G. Clarke to advise N. Crocker of the date for the above plan to be put into effect. As soon as this date has been agreed by W.J. Sinsheimer, the attention being for the takeover group to arrive at the Barbados plant the day following the dismissal of Allan Kovar."

Is it still your position that part of this plan did not include firing or dismissal of Kovar?

A It depends what you mean by dismissal. Part of the plan was that Kovar, in my mind, would not run that facility. You used the word fire before. There was no question -- and my testimony was that I had not made a present intent at the time this was contemplated to fire Kovar. It's my testimony that he was to be dismissed from that particular part of the Plessey operation if, as and when we had the right to take it over.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Going back to Mr. Kinkof's report of March 17th where he purports to describe Plessey's obligations under the contract which you said you didn't agree with, a short range period and a long range period. Do you recall the memorandum?

A Yes, I do. I keep it in front of me.

Q What happened to Kinkof?

A I think that he left the company.

Q How soon after that report?

A I don't remember, to be honest with you. It's when Frank Parr came aboard. Frank Parr took Kinhof's place.

Q That was in April or May?

A I think so, yes.

THE COURT: Are you through with Exhibit 20?

MR. McCONNELL: Yes, I am.

THE COURT: Perhaps you can give it back to me since you are through.

THE WITNESS: Your Honor, I think there is a question that should be clarified. I don't believe I testified on Mr. McConnell's examination that I didn't agree with the conclusions. I think I testified that I didn't see the report.

Q I thought I asked you, Mr. Sinsheimer, whether

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

or not you would agree with that characterization of Plessey's obligations under the agreement and if my recollection serves me correctly, you said that you did not.

THE WITNESS: I would like to have it read back, if I may, your Honor.

MR. MALONEY: Excuse me, I don't even know which report we are talking about now. We are talking about Kinkof's memorandum?

MR. McCONNELL: Kinkof's memorandum of March 17th, in which he says that for the short term that the business had to be run substantially intact and that they could not make these other organizational changes until long range or until after the measuring year.

THE WITNESS: If that was my testimony, then I misunderstood your question, Mr. McConnell. I understood your question to be did I agree with the short range and the longe range objectives. I was referring to both of them if I said that I didn't. Certainly on the question under 1A I would agree in essence that that's what should have been done.

Q You would agree, then, that for the measuring year, that the operation is based upon continuation of ISL's operations in most instances as they are presently handled,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

with the addition of support from Plessey Electronics as requested or where considered necessary to meet objectives; you agree with that?

A I would agree that at the time this was written that that was in contemplation, March 17, 1970.

Q But in fact following the takeover you significantly altered the business of ISL, did you not?

A Would you like my conclusion on the word "significantly"? We altered the business, yes, sir.

Q Well, the contract provided, did it not, Mr. Sinsheimer, that during the measuring year that ISL management was to be given the maximum opportunity to maximize profits so long as they remained in management?

A Yes.

Q And it further provided that the business--

MR. MALONEY: Your Honor, I think the witness ought to have a copy of the contract before him.

THE COURT: I think he should, too.

MR. McCONNELL: I do, too.

THE COURT: I think it's fair. It's attached, isn't it?

THE WITNESS: It's attached, as counsel pointed out this morning.

MR. MALONEY: I would like to give your Honor

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a copy because I have not checked that one to verify that it was actually a copy of the agreement that was signed.

THE COURT: All right.

I take it you are asking him to look at 5D?

MR. McCONNELL: No.

THE COURT: Not 5D?

MR. McCONNELL: No.

THE COURT: What are you asking him to look at?

MR. McCONNELL: See where I had gotten started so I can get back on the track.

THE COURT: It was about the period during the measuring year that you asked him whether the management was to be given the opportunity to operate the division to the maximum profit.

MR. McCONNELL: All right.

Q And the contract further provided, did it not, Mr. Sinsheimer, and I direct your attention to --

MR. MALONEY: I object, your Honor, because I thought we were going to identify the provision of the contract where they had the maximized profits.

THE COURT: I would like you to do, yes.

Q That's paragraph 5 of the contract, is it not?

A Is there any specific subdivision you are referring to?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q I am referring to the language which reads, "Paragraph 6 hereof provides that ISL will be entitled to such an additional money."

MR. MALONEY: Excuse me,

THE COURT: Wait a minute. Let's see if I get it straight. You are referring to this one?

MR. McCONNELL: Paragraph 5, the paragraph 5 refers to 6. That's the confusion.

b2 THE COURT: All right.

Q You asked me what language I was referring to when I referred to the profit maximization profit provision; isn't that right, Mr. Sinsheimer?

A No.

Q No?

MR. MALONEY: I object to that, your Honor. I don't think that's what happened at all.

THE COURT: Don't ask him whether he so understood your question. I wish he would just indicate which part of the contract you want him to focus his attention on and then I wish you would ask him any question you want to ask him.

MR. McCONNELL: Yes.

THE COURT: Please do that.

MR. McCONNELL: I will. I was going to another

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

part of the contract, but Mr. Maloney said --

THE COURT: Don't worry about him. Don't pay any attention to him. You just do what you want.

MR. McCONNELL: All right.

Q Now, would you turn to page 7 and paragraph 6, the paragraph beginning with the word "Profit."

A Yes.

Q Now, that reads, does it not, "Profit as used in this paragraph 6, and in paragraph 5, is intended to, and shall include only income or losses actually generated by deployment of the assets of ISL, such deployment being principally in the manufacture and sale of memory planes and memory stacks, cable harnesses and other electrical assemblies."

Then it goes on to say, "Shall not include income or losses resulting from changes in the accounting methods, practices or procedures."

Have I read it correctly first?

A Yes. You read it totally accurate.

Q So that under the contract, part of the business from which profits were to be generated during the measuring year were not only memory planes and stacks, but cable harnesses and electrical assemblies?

A No, sir. I would not interpret the contract

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to mean that.

Q You would not interpret the contract to mean that?

A No. I would interpret the contract to mean that in computing the profit on which the payout was based, that we would not take into account profit generated from other businesses other than you have stipulated, or expenses in connection with businesses other than you have stipulated. I do not believe that that contract in any way requires the company to maintain all of the businesses, whether they are profitable or not, during the measuring year.

Q Do you recall, Mr. Sinsheimer, that the second draft of contract with reference to the provision that I have just mentioned, that Plaintiff's Exhibit 2, read as follows --

THE COURT: Whereabouts?

MR. McCONNELL: Page 7, paragraph 6, definition, again, of profit.

Q "Profit, as used in this paragraph 6, is intended to, and shall include only income or losses actually generated by deployment of assets of ISL, such deployment being principally in the manufacture and sale of memory planes and memory stacks."

Then it goes on to say, "And shall not include

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

income or losses from changes in accounting practices or methods."

Do you recall that the second draft so read?

A I don't recall, but you have read the draft.

Q Does that refresh your recollection?

A I had nothing to do with the drafts. I didn't see the drafts before the beginning of this litigation. So, I have no recollection -- I have no recollection other than the fact that it now states that. I don't deny that it states that.

Q Would you agree, then, that there was a change in that provision between the second and the third draft?

A Yes, surely.

Q And in the third draft, unlike the third and final contract, that unlike the second draft, there is specifically included as part of the business firm which profits were to be generated, cable harnesses and other electrical assemblies?

A Absolutely.

Q And yet after the takeover in June Plessey decided to discontinue that type of work, namely cable harness and electrical subassembly work; isn't that the fact?

A The statement that I had made to me by the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

management was they were losing their shirt on it.

MR. McCONNELL: Would you read the question back and see if I can get a responsive answer, and I move to strike that.

THE COURT: I don't know. I think you are making a lot of problems here. I think the evidence is quite clear that after Plessey took oer --

MR. McCONNELL: I agree.

THE COURT: They didn't continue the cable harness business, but there was some testimony to the effect that Plessey decided to move the cable harness business to Sao Paolo, if I recall.

Do you know anything about that?

THE WITNESS: I have a recollection that something like that happened, your Honor, but I am not familiar with it.

THE COURT: As I understand it, you said something about the losses, but it was not to discontinue it, but it was to move it out of Barbados into Sao Paola, as I recall the testimony; is that correct?

THE WITNESS: I believe the reason that was given to me was that they couldn't make money in Barbados. It was losing money and it could make money in Sao Paola. But I am really not an expert on that and I don't know.

THE COURT: Do you remember that that's what

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

happened?

THE WITNESS: I believe it is, yes.

THE COURT: All right.

Q Did you participate in any way in that decision?

A No, sir.

Q You didn't.

When did you first learn that that had been done?

A I don't have any independent recollection of that at all. I was not involved in the day to day management of that business -- in day to day discussions.

THE COURT: Do you have a recollection of working on the wording of these drafts, or did you leave that to the full time lawyers?

THE WITNESS: There was only one -- I had nothing to do with the preparation of any of the drafts, your Honor. The only conversations that I got involved in on the draftsmanship themselves had to do with this paragraph 5D. There was in that an exchange of telegrams and telexes between myself and Mr. Dubin who was doing the drafting.

THE COURT: I think what he is really trying to find out is whether you have any recollection at all of why between the second draft and the final contract the words cable harnesses and other electrical assemblies were included in determining the --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4530

THE WITNESS: Your Honor, I would only speculate that we didn't know we were in the cable harness business at the time, or didn't recognize it, but I don't know that as a fact.

THE COURT: But you don't know that?

THE WITNESS: No, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T2 MR. McCONNELL: I offer Plaintiff's Exhibit 16 in evidence. That is Mr. Hewitt's report for the month of March, dated April, 1970.

MR. MALONEY: No objection, your Honor.

THE COURT: All right, it will be received.

xx (Plaintiff's Exhibit 16 received in evidence.)

BY MR. McCONNELL:

Q Referring to Plaintiff's Exhibit 16 and the conclusion paragraph --

THE COURT: Let's tell the jury a little something more than that.

MR. McCONNELL: This is a report from Mr. Hewitt --

Q Who was Mr. Hewitt?

A Peter Hewitt was the head production man at our Portugal facility. When Mr. Kovar advised us that his chief operations guy was leaving and did we know of anybody, we agreed to send Peter Hewitt, who was the best guy I knew in the business, down there for a period of six months.

Q And he had been there since some time in March, is that right?

A Since, I think, early in March.

Q Mr. Hewitt states, does he not:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

"We have plenty of orders for the next two-three months. There appears tobe no shortage of new business near. The team here is a pleasure to work with and I am made to feel very welcome."

That is the same Hewitt that you say reported to you that he found things in a state of utter confusion or chaos?

A. No, sir. I never spoke to Mr. Hewitt on the subject. I have never seen the report you talked about, even now you didn't show it to me --

THE COURT: Show it to him.

A (Continuing) My testimony is and was that I was told by Clarke and Crocker that Hewitt said the place was a disaster.

Q Not Hewitt?

A I have never spoken to Hewitt in my whole life.

THE COURT: Show him the exhibit you are talking about.

Q So that feedback was from those two gentlemen but not Hewitt?

A It was from Hewitt through those two gentlemen, yes, sir. That is right.

JUROR NO. 4: What date was this?

MR. MALONEY: I think Juror No. 4 would like to

know the date of this report we are talking about, your Honor.

THE COURT: It is signed Peter Hewitt. The only date is under that it says April, 1970. There is no other date that I can see on the instrument.

MR. McCONNELL: That is correct, your Honor.

THE COURT: Okay.

Q Let me say if I understand what you are saying. Your only feedback on the operation was from Crocker and Clarke?

A Yes, sir.

Q And are you testifying now that they reported to you that Hewitt had said this?

A Yes, that they said it, they believed it, that they were in discussion with Hewitt and Hewitt said it.

THE COURT: Where is Mr. Hewitt now?

THE WITNESS: He is in England, your Honor.

THE COURT: He is still working for Plessey?

THE WITNESS: I don't think so, no.

MR. MALONEY: Your Honor, I know he is not. I have been in telephone communication with him over the last two weeks.

THE COURT: I thought the jury might be interested to know. He is no longer with Plessey?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

op4 Sinsheimer-direct

MR. MALONEY: He left Plessey within the last five months, your Honor, for a better job.

THE COURT: Thank you very much.

MR. McCONNELL: I offer Plaintiff's Exhibit 19 in evidence, which is Hewitt's May report.

THE COURT: You are offering it in evidence?

MR. McCONNELL: I am offering it in evidence, the May report to Mr. Clarke, Mr. Crocker and Mr. Kovar.

THE COURT: All right, any objection?

MR. MALONEY: No objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 19 received in evidence.)

Q Mr. Hewitt in his written report to Crocker and Clarke for April, I'm reading now from the bottom of page 2, states:

"Despite the low sales compared with the sales forecast, April was not a poor month. Manufacturing did very well in spite of poor material situation. Our failure to ship was our inability to get things past test. Once again, not in general poor manufacturing but poor testing. I believe with the attention this department has received since its failure, we can be more sure of accurate testing.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

The test department is one of my responsibilities. I am sure there is a significant improvement over one month ago and all my senior staff feel enthusiastic about the future."

Mr. Hewitt so reports in his written report to Clarke and Crocker, is that right?

A You have read it accurately; yes, sir.

Q Now, isn't it the fact, Mr. Sinsheimer, that at the time Messrs. Crocker and Clarke were down in Barbados or at the Spring Joint Computer Conference and requesting Kovar's assent to these various things they wanted to do that these plans had already been actioned as part of a world memory plan?

A I don't know what kind of plans you are talking about, sir.

MR. MALONEY: Your Honor, could I have that question read back, please?

THE COURT: Surely.

(Question read.)

Q I show you Plaintiff's Exhibit 72, whichis in evidence, which is entitled "Integrated World Memory Business Plan," dated May 8, 1970.

Stopping right there, Mr. Sinsheimer, would you agree with me --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Are you showing it to him or are you talking about it? You said you are showing it to him so he had better take a look at it.

Q Stopping right there, Mr. Sinsheimer, would you agree with me that the printed plan, bearing the date of May 8, must have beenprepared some time prior thereto?

A Would I agree with you? I wouldn't know. I would presume it was. I didn't prepare this, I don't believe.

THE COURT: You are on the distribution list with a lot of other people getting this document?

THE WITNESS: Yes, sir. Your Honor, in my capacity as director of all of our overseas operations, I would get anything as a normal course that had to do with any business that was outside of the United Kingdom in whole or in part.

Q Referring to page 5 and the paragraph headed "U.S.A." which reads:

"The recent establishment of the U.S. Memory Division forms the basis of the plans for the U.S.A. With the recent acquisition of ISL in Barbados advancing these plans considerably. The decision has already been taken to establish a marketing, engineering and service facility in the Boston area

and before very long a marketing and engineering facility will also be established on the West Coast. A new marketing manager for the U.S.A. has recently been appointed and the Barbados management strenghtened by the loan of the man from the Portugese facility."

Does that refresh your recollection that at the time Clarke and Crocker were asking Novar to agree to the establishment of a marketing, engineering and service facility in the Boston area that that action had already been taken and agreed upon?

2 A Mr. McConnell, that action to have a U.S. facility for service, repair and engineering was taken long before the acquisition of ISL. I don't believe that Mr. Crocker and Mr. Clarke asked Mr. Kovar's permission. I don't believe that that permission was necessary or required under the agreement. Our business in the United States wasnot only ISL. Our business was the totality of all of the Plessey Company's memory business and we were, in fact, shipping stacks that were strung in Portugal into the United States at that point in time. We had to have service facilities. We had to have marketing and what Mr. Clarke and Mr. Crocker were talking to Mr. Kovar about was whether or not he would make use of those facilities,

but those facilities would have been established whether or not Plessey took over because it was believed that we had to have a totality of the U.S. business and under the agreement, as I understand it, we, Plessey, had the right to continue to sell stacks and planes to DEC in Maynard, Massachusetts, from our Portugese or our Maltese facility.

Q In competition with ISL, is that your testimony?

A I believe we had the right by giving ISL credit, and I can't recall the specific words,to continue that business.

THE COURT: You think that was in the contract?

THE WITNESS: My recollection, your Honor, I am not terribly familiar with the contract, but my recollection was that we were going to give this operation the benefit of that business. We were going to give them the benefit of establishing this very extensive facility in Boston without charging it to the profits of the measuring year.

Q In any event, I take it it is your testimony, Mr. Sinsheimer, that as of May 8 and, in fact, some time before it had already been agreed and decided that Plessey was going to establish this facility in the Boston area?

A What had been decided was that the current facility that was established in Farmingdale would move

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to Boston. That is my testimony.

Q At least as of May 8thor some time prior thereto?

A That is the date on the document, yes.

Q And, so, whether or not Kovar was asked to assent to that or whether or not he agreed to it, you were going to go ahead and do it anyway, is that your testimony?

A It was already there. The Farmingdale facility was there. This was a plan to move it.

Q Do you recall that on June 9 you sent a letter to ISL saying that Plessey was assuming full management responsibility?

A Yes, sir; I did.

Q You got a letter back from Mr. Carlen on June 17 or thereabouts?

A Yes, sir; I did.

Q Do you recall that?

A Yes.

Q And Mr. Carlen said that the ISL people were going to look to Plessey as a trustee of their rights and look to them to maximize profits during the measuring year, do you recall that?

A Yes, sir.

Q You wrote back and you rejected that concept or notion that you were a trustee; is that right?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, sir.

Q Do you recall that Mr. Carlen also requested financial data?

A Yes, sir.

Q In his June 17th letter?

A Yes, sir.

Q You wrote back and said it was not the policy of Plessey to furnish financial information?

A That is correct.

Q Do you recall that Mr. Carlen also asked for a face-to-face meeting with you?

A Yes, sir.

Q And you wrote back and said you couldn't see any useful purpose being served by such a meeting; is that correct?

A That is correct.

Q But notwithstanding that a meeting was, in fact, arranged with you; is that right?

A Yes.

Q Do you recall that taking place on or about July 13th?

A Yes.

Q That was at your office?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And besides yourself were Mr. Shapiro and Mr. Carlen present?

A That is correct.

Q Do you recall Mr. Carlen again asking you for financial data so that they could follow the progress of ISL during the balance of the measuring year?

A Yes.

Q Again,did you reject his request or say that you were not going to give financial data?

A I said to him that I wasn't going to give him any written financial data, that he should feel free to call me if he wanted on a monthly basis and I would tell him what the situation was like.

Q You told him that you were not going to give him any of the financial reports of the company?

A That is correct.

Q Do you recall also telling Mr. Carlen that ISL was going to easily or more than make its profit requirement under the payoutand that you would be writing a check for the maximum amount the next April and that, therefore, "You've got nothing to worry about"?

A No, sir; I did not.

Q You deny having said that?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you deny having said anything like that?

A No, I don't deny having said anything like that.

THE COURT: Did you talk about what you thought the picture would be during the balance of the measuring year; did you talk to Mr. Carlen about that?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: I made a telephone call.

THE COURT: Yes.

THE WITNESS: I think to Milton Albert and I asked how the business did in June.

Then I asked him what were the current projections. I did say to him on the basis of the current projections, "You look like you're probably going to make your money," but I never said to him, "Don't worry about it," and I never said to him we would be writing a check.

I said to him, "You can call me from time to time and I will tell you how it is going, but as of now you projections for the balance of the year were reasonably good.

Q It looked like you would be making your money, isn't that right?

A No -- well, it looks like on the basis of the current projections, as I have just heard them over the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

telephone,if they are correct, we will end up with a reasonable profit.

Q You said for the measuring year it looked like we were going to make a profit of $600,000; is that right?

A I don't remember the specific number.

Q In any event, you said it looked like you were going to make sufficient profit so you would receive the maximum payout?

A I didn't use those words, but he could interpret it that way.

Q That would have been 1,260,000?

A If that is the number in the documents, yes.

MR. McCONNELL: That is all.

CROSS EXAMINATION

BY MR. MALONEY:

Q Mr. Sinsheimer, do you recall the various meetings in December and early January when you were negotiating price with Mr. Kovar whether Mr. Frey was present at any of those meetings?

A He was present at one meeting in early January where, in fact, the price was agreed.

Q During that discussion of price was there also a discussion of how much money Plessey would be required to contribute to the business?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, there was. The amount of money was in addition to the down payment, which was $180,000, was that we would be required to put up as working capital in order to take care of the existing obligations and the running of the business 600,000.

Q Do you have any recollection of how the $600,000 figure was arrived at?

A It was arrived at by the fact that the business had a loss during the year of -- during the year ended then of $200,000. There were debts and also there was an an amounf of $200,000 that had to be paid to a firm called Data 100.

Q At the time of these discussions in December and early January had you seen a copy of any financial statement for the year ended December 31, 1969, for ISL?

A In early December, no, I don't believe so. I think I saw October figures, an October balance sheet, and a November balance sheet, but no December 31 balance sheet.

Q What was the basis -- who informed you that the business was going to lose about $200,000 for the year 1969?

A Mr. Kovar.

Q Did Mr. Albert attempt to confirm that to your

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

knowledge on his trip to Barbados in December?

A Yes, I think he did.

Q When Mr. Albert returned, did he indicate that based on the information he had obtained that the loss would be about $200,000 for the year?

A Yes, he did.

Q Was Mr. Frey present during these discussions basing the $600,000 contribution on the $200,000 projected loss?

A Yes, it was actually Eric Frey thatcame up with the number because, as our chief financial officer, it was his responsibility to deal with the numbers portion of it. So, he was the one that actually came out with the figure.

Q Did Mr.Albert agree with him based upon what Mr. Albert had learned in Barbados?

A Yes, he did.

Q When do you recall the issue of management control coming up for the first time?

A Well, the original arrangement was an earnout and they would get paid, ISL shareholders would get paid this extra money if they earned $360,000 and at that time there was no discussion of management control.

Then, in the subsequent discussions the question arose as to the fact how were they going to be able to earn

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

this money and know it would be earned unless they had management control and I saw the reasonableness of that and I said, "However, you know, I can't sit here for a year and allow this business to go downhill, if it does. We have got to make some provision for taking over the business in the event that it doesn't go according to plan."

How the number 15,000 a month arose,I don't know, but the proposal was then put forth that starting after a period of the first three months, if they didn't make $15,000 in each and every month thereafter, that we had a right to take over.

Q Do you have any recollection of when the first draft of the contract was prepared by Mr. Dubin?

A It was some time in mid-January, I believe.

Q Did you have any face-to-face discussions with Mr. Kovar as to what the precise language should be governing management control?

A No.

Q Who was responsible for working out the language of the management control provision?

A Mr. Dubin and Mr. Albert together. I only participated in the negotiation of the price. The specific boilerplate and terms of the contract, the terms were negotiated by Mr. Albert, who is the financial vice-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

president of the company, and the verbiage was by Mr. Dubin, who is the company's counsel.

Q Mr. Sinsheimer, I show you Defendant's Exhibit B and Defendant's Exhibit P in evidence, and I ask you if you can identify those documents?

A Yes. Exhibit P is a Telex from Seth Dubin to me which suggests some language with respect to this problem of the measuring year.

B is my reply to that. They weren't cold Telexes. They arose out of telephone conversations.

Q That was my next question. Where were you at the time of these Telexes?

A I was in England.

Q In connection with the Telexes, do you recall having any telephone conversations with Mr. Dubin?

A Yes, Mr. Dubin called me and started a conversation about the fact that Mr. Lewis wanted certain language in this agreement and I said to him, "I am sorry, Seth, I can't assimilate it over the long distance telephone. Put it in a Telex." And this Telex was the reply to that request.

Q That would be Defendant's Exhibit P?

A Yes.

Q It was your understanding that that was the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

language which Julius Lewis had proposed to Mr. Dubin be inserted in the contract to govern management control?

A Yes, that is what he told me and that is what the exhibit states.

Q Did you reject the language proposed by Mr. Lewis?

A Yes, I did.

Q Did you propose of your own?

A Yes. Defendant's Exhibit B proposes the language that was acceptable to me.

Q Referring to the third sentence in your Telex, "Notwithstanding the foregoing, if ISL profits are not at least 15K" -- I assume that meant thousand?

A Yes, to me it does.

Q -- "dollars per month in each of the ten full months commencing with the third calendar month of the measuring year, this sub-paragraph shall no longer apply and Plessey shall have the right to assume full management responsibilities."

What did you understand that language to require when you placed it in your Telex?

A I understood that after the third month that in each month they had to make at least $15,000 or the company had a right to run the business.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q What would be the first --

THE COURT: You fellows are going much too fast for me. Who made all these little notes on this exhibit?

THE WITNESS: I don't know, your Honor.

MR. MALONEY: Mr. Dubin did, your Honor.

THE COURT: All right.

MR. MALONEY: Mr. Dubin made the handwritten changes.

THE COURT: This was the Telex you sent to Dubin?

THE WITNESS: Yes.

THE COURT: And he put all these do-jigs on?

THE WITNESS: Yes. I think counsel has read it with my words without the changes.

MR. MALONEY: Yes, I read Mr. Sinsheimer's original words. I didn't read it with any of the changes that are made in handwriting. I don't believe the handwriting is in evidence yet, your Honor, because only Mr. Dubin --

THE COURT: I don't know, it just happens to be on my copy and that is why I was trying to get straightened out.

MR. MALONEY: I think I offered it without the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

handwriting at the time because Mr. Dubin would testify to the handwriting.

Q Under the language which you proposed, what was your understanding of the first month in which ISL would have to earn a profit of at least $15,000?

A It really depended on when it closed. It was the third month after the closing.

Q Assuming the closing took place in March, what month would they have to make a $15,000 profit under the language you proposed?

A They would have to make it in June.

Q Did I understand you correctly that they would have to make it in each and every month of the remaining ten months of the measuring year?

A That was my intention.

Q There would be no averaging of any kind under the language proposed; is that correct?

A No, sir.

Q Now, with respect to maximization of profits, do you recall making any change in the last sentence of proposed paragraph 5-D?

A Yes, the Lewis text, as I recall, indicated that if --

Q It is right there in front of you.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A In the last sentence of the Lewis text it says:

"In any event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in such a manner as in Plessey's judgment exercised in good faith shall maximize the profits for the measuring year."

I specifically didn't like that and I specifically changed that to say:

"In such event, however, Plessey shall be obligated to continue the business if ISL during the measuring year in good faith."

I deleted the terms "maximizing profits," running it in such a way to maximize the profit.

Q Why did you do that, Mr. Sinsheimer?

A Because I didn't think that if the management of this business had failed we should owe more than an obligation to use good faith and run it in a reasonable way.

Q It was your understanding that maximizing profits was not included in the obligation of good faith; is that correct?

A Yes, that is my understanding.

Q By the way, what is your understanding of what the good faith obligation in the contract required?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Good faith obligation requires that we run the business as a reasonable man would run his own business so as to achieve a profit.

Q Did you instruct Mr. Dubin to include this language in the contract as paragraph 5-D?

A I did.

Q Did there come a time when someone advised you that ISL believed that the language you were imposing would impose too harsh an obligation on them during the measuring year?

A Yes, I was told by both Mr. Dubin and Mr. Albert that the ISL board believed that the problem of making profits in each and every month was onerous and unfair; that they could go along and make $15,000 in June and twenty-five in September and thirty-five in October and then all of a sudden something would happen, that they couldn't get materials or something like that, and that they would then lose the right to maximize the profits and run the business.

I rather agreed that that was a problem and that it was unfair to stick them to do doing this each and every month. That wasn't my intention.

My intention was to make sure that this management could run the business and to make sure that they could

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

meet these profit levels and, consequently, I authorized the change and that change was that if they made the profit in June, as I thought then it would be, then they could use the profits from the months they made the profits, June, July, August, to offset this disaster in October or whenever it may occur, and that is what I instructed be written.

Q So, you authorized Mr. Dubin to agree to such a change; is that correct?

A Yes, I did.

Q Now, did you discuss this change with anyone else other than Mr. Dubin in connection with the agreement signed on February 4, 1970?

A Oh, I presume Mr. Albert because they were dealing with this together. I would imagine both of them, yes.

Q Do you have any recollection it with Mr. Kovar or Mr. Lewis?

A I don't believe that I saw Mr. Kovar again after the original discussions for a long time.

Q Do you recall any discussion with Mr. Dubin that the change which you authorized would make any change in the first month by which they must achieve the $15,000 profit?

A No.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: How did that original concept that you did have, you were operating on the theory that it would be unfair to penalize them if they had a bad month somewhere along the line?

THE WITNESS: Yes, sir. The theory I was working along was if they were going along and running the business well and all of a sudden they had a bad month, and this is precisely the way it was explained to me, it was explained to me that the ISL people said to us that they felt it was unfair and a specific example given, your Honor, is the example that was given to me as the example that the ISL people gave to our people. What happens if we go along for five or six months doing a really good job and then something happens where we don't get material --

THE COURT: Supposing it happened the first month that they had a problem getting material or something like that, that wasn't within your concept?

THE WITNESS: No, sir; it was my concept at all times that I had to see this business making money and starting to be a profitable entity for the company because that is why we bought it. We wanted it to be profitable.

Q Do you still have a copy of the February agreement, Mr. Sinsheimer, that would be Plaintiff's Exhibit 3,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in front of you?

A Yes, sir.

Q Will you turn to paragraph 10-E. I believe it is on page 12.

MR. MALONEY: I believe this paragraph has been read a number of times, your Honor, but several days have elapsed since then. Do you have any objection to my reading it again?

THE COURT: No, I guess the jury and I will be glad to hear it again if you want to read it.

Q Paragraph 10 says:

"ISL represents and warrants ..."

And turning over to paragraph E-1, it says:

"Since December 31, 1969, there has not been:

"1. Any change in ISL's financial condition, assets, liabilities or business other than changes in the ordinary course of business, the sale of the property, which has been the residence of E. Allan Kovar and the writing off of approximately 20,000 ($20,000) U.S. dollars of testing equipment. Operating losses not at a rate in excess of 20,000 ($20,000) U.S. dollars per month for the period from December 31, 1969, to the closing hereof shall not constitute an out of the ordinary change of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

ISL's condition."

Mr. Sinsheimer, what was your understanding of the intent of that paragraph in the agreement?

A My understanding was that what we were being told was being warranted was that the balance sheet that we had seen, the $200,000 loss was, in fact, what the loss was and --

THE COURT: The balance sheet as of December 31st?

THE WITNESS: No, we didn't see the balance as of December 31.

THE COURT: I thought you just said something --

THE WITNESS: No, what I meant was that it was my understanding that the statement that had been made to me that the losses were $200,000 for the year was one of the changes and condition and the other was that there wasn't going to be any sale of assets and there wasn't going to be any change in the balance sheet and also that the business was going to be limited to losing $20,000 a month until the closing.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mmh 1 Sinsheimer-cross

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Q Why was that important?

A Because the basis, the whole basis upon which we were buying the business was its potential viability. These were the numbers on which we negotiated the deal, and if those numbers were going to be different, then the deal may have been different. I don't know whether it would have been or not, but it was highly important to us, as it is to every man who buys anything, to know what it is he is buying, and this was to assure that we were buying what we were told we were buying.

THE COURT: This may be a good time to take our afternoon recess.

(Recess.)

THE COURT: You may proceed, Mr. Maloney.

BY MR. MALONEY:

Q Mr. Sinsheimer, I show you Defendant's Exhibit Z in evidence and I would ask you if you could tell the jury what that is.

A This is a letter from Allan Kovar, dated February 6, 1970. I can't say it is a plan -- it is a summary of Mr. Kovar's thoughts on the future structure for the Plessey U.S. memory activities.

I told Mr. Kovar that I would be coming down to Barbados, and he refers to my Barbados visit and would

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

like me to have this before I come down there.

Q Prior to February 6th and prior to the signing of the agreement had you had discussions with Mr. Kovar concerning the importance of having certain functions in the United States in order to sell core memory planes and stacks to United States customers?

A I had some discussion with him. As a matter of fact, it was in the initial stages when I told him why we were interested in ISL is to be able to permit us to be able to move in quickly. I think it was probably at the same time I asked Mr. Kovar, as I think I testified, whether he wanted to be a lawyer or whether he wanted to be a business man, and I think I tried to outline the opportunities I saw possibly if this venture was successful.

THE COURT: Do you think it's better to be a lawyer or a business man, Mr. Sinsheimer?

THE WITNESS: Do I have to answer that?

THE COURT: Yes, the jury and I would like to know.

THE WITNESS: I frankly like being both.

THE COURT: All right.

Q Now, in connection with your discussion with Mr. Kovar did you discuss with Mr. Kovar some time in these meetings in January whether or not Plessey was having difficulty in gaining access to United States customers

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

because it did not have a United States facility for testing and repair and building prototypes?

A Yes, I did.

Q Could you tell us the substance of that conversation?

A Well, the Plessey Company at that time was the most successful memory operation in Europe, I believe, and we tried on four or five occasions to make a substantial penetration into the United States market withou too much success. At that time in our operation we had a reasonably large contract with Digital Equipment Corporation, and what was being reported to me was that one of the problems with this is that the customer kept saying, you know, "Why should we do business with you; you are 3,000 miles away."

These are very, very fragile things; they have a lot of wires in them and they break, and normally you have to have a place to repair them that is reasonably close by. That is number 1.

Number 2, the other thing that was told to me, and this was told to me in person, I went out to Raytheon Computer in California. As a matter of fact, that is where Mr. Kinkof came from. And he was, I think, the purchasing man at the time I talked to personally. He

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

said they just couldn't do business with us unless we had a real United States presence where we could design, where we could repair in the United States. And the question I asked Mr. Kovar, I said, "Why do you think ISL is going to be successful, because you got the same problem?" He said, "No, I don't really think it is, because there are United States engineers and this is a sort of U.S. offshore facility." But I think to some extent he must have agreed with me that there must be some kind of a presence in the United States in order to get business.

Q Now, referring to Defendant's Exhibit Z, Mr. Kovar's letter to you dated February 6th, did he, in fact, suggest that the performance of ISL would be improved by having certain of those operations in the United States?

A Yes, he did.

Q And by looking at the letter could you tell us which functions Mr. Kovar proposed could be improved by having the United States facility?

A Well, he says:

"To maintain the present low marketing cost as well as to maintain the tax-free status of our United States sales, I suggest the continuation of the sales representative method of marketing. This method should be strengthened, however, with the addition of a Company

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Marketing Director and several more Applications Engineers. These individuals can be stationed in the United States. The engineers, however, should spend at least 1 to 2 weeks in Barbados every two months. They should be assigned to a particular area of the country and should work with the rep (s) in that area to provide deeper engineering interface with the customers from that area. Their regular visits to Barbados are to make sure that they remain, in fact, applications engineers, who will follow through to production the memory products we build for their customers. This will not only insure more accurate and expeditious start-ups, but will also keep their viewpoint directed toward the pragmatics of memory design."

He goes on to say, "The United States office should also have testing repair capabilities. While our current repair turnaround time is less than two weeks, a U.S. based facility would reduce import-export costs and could also be a sales advantage.

"Finally, with engineering being located in the United States, a U.S. prototype facility would also be helpful."

I think roughly that is what his determinations were.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did you have discussions with Mr. Kovar on the telephone or face to face concerning these proposals in this letter, if you recall?

A To be honest, I don't recall. I could have, but I don't recall. I had originally scheduled a visit to Barbados which, unfortunately, had to be cancelled.

Q In any event, Mr. Kovar never disagreed with you that it would be beneficial for the business to have an office in the United States performing those functions?

A No, sir, it was his notion in the letter before the closing.

(Defendant's Exhibit BE marked for identification.)

Q Mr. Sinsheimer, I show you Defendant's Exhibit BE for identification and I ask you if you can identify that document.

A Yes, it is a balance sheet and a statement or profit and loss for the measuring year ended 31 March provided by Price, Waterhouse, accountants, chartered accountants in Barbados.

Q Was that report provided in connection with the measuring year?

A Yes, it was.

MR. MALONEY: I offer it in evidence.

MR. McCONNELL: There is no foundation for the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

introduction of this document.

THE COURT: Did you make a copy of that available to ISL?

THE WITNESS: Did I, your Honor?

THE COURT: Yes.

THE WITNESS: Before this litigation?

THE COURT: No, at the time this report was made which indicated, I take it, that there was no further payment due to ISL? Is that correct?

THE WITNESS: Yes.

THE COURT: Did you make a copy of this available?

THE WITNESS: To be honest with you, your Honor, I don't know. I gave them the figure on the telephone verbally.

THE COURT: Whom did you give it to?

THE WITNESS: To Mr. Carlen. I wrote a letter to Mr. Carlen which makes no mention of including this, so I have no recollection of whether it was, and, frankly, I can't testify that I ever did.

MR. McCONNELL: Your Honor, there has been no foundation for that. We have not had the Price, Waterhouse man here. I have a host of objections to it.

MR. MALONEY: Your Honor, I won't offer it at this time.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: It is marked for identification for the time being.

bl Q Now, Mr. Sinsheimer, do you have any recollection of whether in computing the profit and loss for purposes of the measuring year ISL was charged with any part of the cost of operating a facility in Boston?

A No, sir, it was not.

Q Have you recently reviewed that with the accountants from Price, Waterhouse to be sure that that is accurate?

A I reviewed it with them yesterday, sir.

Q Thank you.

Getting back to the management control provision, paragraph 5D, I show you a copy of Plaintiff's Exhibit 4 in evidence and I ask you to tell the jury what that document is.

A The document is a letter which is signed by Mr. Lewis of the Sonnenscheim firm -- law firm in Chicago, and by Seth Dubin of Sinsheimer, Sinsheimer & Dubin.

Q Do you recall what the purpose of this letter was, Mr. Sinsheimer?

A I think it was-- I think there were two things. Number 1, I think they substituted Plessey Incorporated as the purchaser of the business rather than the Plessey

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Company Limited and I think also there was a mistake in the wording of this averaging provision. There was a double negative, if I recall.

Q In the agreement signed --

THE COURT: It said at least instead of less than?

THE WITNESS: Yes, sir.

THE COURT: I don't know what that has to do with averaging, but that was the error, wasn't it?

THE WITNESS: Yes.

Q Referring to the next to the last paragraph of paragraph 5D as it is set forth in Plaintiff's Exhibit 4, it says, "Notwithstanding the foregoing, if ISL profits, commencing with the third calendar month of the measuring year, average less than 15,000 (fifteen thousand dollars) (U.S. dollars) per month, or if there have been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and Plessey shall have the right to assume full management responsibilities."

Now, what was your understanding of that provision?

A The understanding of that provision was precisely the same as my understanding of the contract, because I had signed the contract not seeing the error in draftsmanship, and that was that if they didn't make $15,000 in the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

third month, which turned out to be June under this agreement, that we could take over; that thereafter if they had continued to make profits, they could average in the profits made against any losses or any diminution of the $15,000 in order to prevent us from taking over the business, the management of the business.

THE COURT: Let's see if I understand that. If ISL profits, commencing with the third calendar month of the measuring year -- now, what was the third calendar month of the measuring year?

THE WITNESS: Your Honor, I think that would be June.

THE COURT: June. All right.

So that if ISL profits, commencing with June of the measuring year -- is that right?

THE WITNESS: Yes, sir.

THE COURT: Averaged less than $15,000 per month, or if there were three consecutive months of losses -- how do you read that, assuming the profits for June were less than $15,000, would that bring that into play?

THE WITNESS: Yes, sir. It's exactly the same-- my understanding of this was precisely the same as my understanding before, that the way this got into the contract to begin with was, as I think I testified before

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the recess, that I wanted it each and every month and my compromise was to take care of the situation that the ISL people postulated, that they had five or six good months and then all of a sudden there was a disaster.

THE COURT: So when you see the word average here, you say average applies after the third calendar month; is that right?

THE WITNESS: Yes, sir.

THE COURT: It doesn't apply to the third calendar month?

THE WITNESS: No, sir.

THE COURT: Is that right; that was your interpretation?

THE WITNESS: That is my interpretation, and that is what I intended to convey to my draftsman.

THE COURT: I see.

Q At any time between early February when the agreement was signed and March 2nd, the day of the closing, did anyone advise you that ISL had in fact lost approximately $400,000 for calendar year 1969 rather than $200,00?

A No, sir.

THE COURT: But it follows, though, that the board in England knew that, didn't they?

THE WITNESS: The board in England, your Honor,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

knew on the 27th of February.

THE COURT: They knew that on the 27th of February?

THE WITNESS: I don't believe that's even a fact.

THE COURT: They knew they needed another $200,000?

THE WITNESS: Yes, sir, but they didn't know why.

THE COURT: You think they didn't know why?

THE WITNESS: I am reasonably certain they didn't know why.

MR. MALONEY: I intend to go through all of that to try to make it clear.

THE COURT: All right.

Q What happened on March 2, 1970?

A There was a closing in Barbados.

Q Do you recall who went to the closing on behalf of Plessey?

A Yes.Milton Albert and Seth Dubin.

Q Now, at any time before Mr. Dubin and Mr. Albert left for Barbados, did you discuss with them, or instruct them to obtain any kind of amendments to the contract?

A No, sir.

Q At any time before either of those gentlemen left

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

for Barbados, did you discuss with them that there would be a need to contribute more than $600,000 to the business?

A No, sir.

Q Do you recall having any discussion with either Albert or Dubin or anyone else as to how much ISL had lost in the month of February?

A No, sir.

Q Had you had any discussion with anyone in the world concerning the need for amendments to the contract prior to March 2, 1970?

A No, sir.

Q Had you had any telephone conversation with Mr. Frey prior to March 2, 1970, concerning the amount of money which would have to be contributed to the business?

A No, sir.

Q Now, on March 2nd, when you received a telephone call from Albert or Dubin, what did they tell you they had learned in Barbados?

A Two things. First, that the business had -- well, two things, but another thing was involved. First, that the business was losing more money --

THE COURT: How did this come about; did somebody call you up?

THE WITNESS: Yes, sir, your Honor. There were

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

innumerable telephone conversations, the first of which--

THE COURT: With whom?

THE WITNESS: With Milton Albert and Seth Dubin, either on two different phones or one and then the other.

THE COURT: All right.

THE WITNESS: There could have been conversations where I talked to one where the other wasn't in the room, but I can't recall that.

A The first conversation was--

Q Excuse me, Mr. Sinsheimer, where were you?

A I was in New York, in my office in New York City.

Q All right.

A The first conversation was that when they got down there they learned that the losses for the year ended December 31, 1969, were $200,000 more than I thought they were. They were $200,000 more than I had been told by Kovar they in fact would be. The second thing was that the company had --

THE COURT: Let's stick to this. It would help me and the jury I think if you stick to one at a time.

THE WITNESS: Yes.

THE COURT: What happened to the $200,000? The loss was $200,000 more?

THE WITNESS: Yes. And I said, "What does that

mean, Milton?" And he said, "That means something very simple. If you have to put in in working capital $600,000 in a business that lost $200,000, you will have to put $800,000 in if the business in fact lost $400,000."

THE COURT: That's what he said to you?

THE WITNESS: That's what he said to me.

THE COURT: He said to you -- what did he ask you to do?

THE WITNESS: He didn't ask me to do anything, your Honor. He told me about the second thing next.

THE COURT: He said he was going ahead to amend the contract?

THE WITNESS: No.

MR. MALONEY: No, your Honor.

THE WITNESS: This conversation was Milton Albert, who was our financial guide, callingme up to advise me of a situation and asked me what to do rather than to tell me what to do and then you have a conversation, we talked about it. But I think the second thing he told me, because it was in the same conversation, was that rather than losing $74,000 -- rather than losing $20,000 in the month of February, which the contract had said they were going to lose, and which we were firmly under the impression was the magnitude of the loss, he said it

rgh9 Sinsheimer-cross

b2 was $74,000 in the month of February.

THE COURT: It was in one month?

THE WITNESS: Yes, I believe it was February.

THE COURT: There has been some testimony that the two months were January and February.

MR. MALONEY: I think it was two months, January was $1,600 and February was $7,200.

THE COURT: So it would be 74 rather than the 20 you understood?

THE WITNESS: The number 74 stood in my mind for some time. At that time I said "Let's forget it. Just let's forget it."

THE COURT: What did you mean by that, forget the deal?

THE WITNESS: Yes, and I said, "Come home," and I hung up. I then got another call back. He was thinking about it. He said, "Well, is it really so important, the question of the $600,000?" He said, "Can't we do something where they -- the business, ISL will pay us interest?" They weren't required to pay interest on the first $600,000. "Couldn't we do something where they could pay interest on whatever else is involved?" Then there a long conversation and I --

THE COURT: At that point you didn't know anything

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of what had happened in England?

THE WITNESS: No, sir.

MR. MALONEY: Your Honor, I planned to do it later. I see there is a great interest in it, so I will jump ahead.

THE COURT: I am interested in it because I heard testimony that the board in England and the preceding $600 and $800 thousand before this and I was just wondering whether you knew about it.

THE WITNESS: Your Honor, the board minute -- I think there was some confusion in the way it was put in. That board minute is nothing but informative. They don't say go ahead and put $800,000 in. What Frey did was inform the board it would require that as he informed them that they were changing it from Plessey Incorporated, which had been 20 days before that.

THE COURT: But you had not been informed of it?

THE WITNESS: No, sir, I was not at the board meeting.

THE COURT: But your people in Barbados knew that?

THE WITNESS: The people in Barbados?

THE COURT: When you said you were going to put in another $200,000, did they know about it?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: The board, no.

THE COURT: No, your people in Barbados.

THE WITNESS: Dubin?

THE COURT: Yes.

THE WITNESS: They got there on the 2nd of March.

THE COURT: They knew it, but you didn't know it?

THE WITNESS: That's correct.

MR. MALONEY: I'm sorry, your Honor --

THE WITNESS: They knew it at that time on the 2nd of March. They didn't know it before they went down there, if that's what you wanted.

THE COURT: No. When they telephoned about these things, they knew about it, but you didn't know it, so you had the proposition about putting in $200,000 more and you said "I don't know if it's worth a gamble," is that right, or something to that effect, "Let's forget the deal?"

THE WITNESS: Yes.

BY MR. MALONEY:

Q But did Mr. Dubin and Mr. Albert indicate in any way that they knew it before they got to Barbados on March 2nd?

A No. They found out about it in Barbados. I think

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that's what your Honor wants to know.

THE COURT: I was saying when you said about the $200,000, whether they knew it had been reported to the board in England that they were going to have to put up another $200,000.

THE WITNESS: They didn't.

THE COURT: They did not?

THE WITNESS: No, sir.

Q Would Mr. Dubin or Mr. Albert communicate with the board directly or would they do that through you?

A No. They would only do that through me. They would have no communication with the board at all.

THE COURT: So as far as all of you, none of you had known what the board had done in England a few days before; is that right?

THE WITNESS: No, sir.

xx (Defendant's Exhibit AF marked for identification.)

Q Mr. Sinsheimer, I show you Defendant's Exhibit AF for identification and I ask you if you can identify that document.

A Yes, I can. It's a memorandum from Don Clarke to myself dated March 5, 1970.

Q Is that March 5th?

A March 2nd.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: You received it on the 5th; is that right?

THE WITNESS: Yes, sir.

A March 2, 1970, which encloses a copy of the brochure prepared by Mr. Crocker which incorporates the brochure jointly prepared by Crocker and Clark.

Q All right, now, are those the two reports which Mr. McConnell showed you this morning?

A Yes, sir.

Q Now, I show you a copy of Plaintiff's Exhibit 11, which is the document entitled "Memory stacks USA prepared by N.J. Crocker and W.F. Sweeney" dated February 5, 1970, and I ask you if that's the document--

A 25, excuse me.

Q February 25, 1970.

Is that the document which you just identified as being the document referred to in the first sentence of Mr. Clarke's memorandum?

A That's correct.

Q Did I understand your testimony correctly this morning--

MR. MALONEY: Your Honor, do you have the big blue one there? I don't have my copy of it.

THE COURT: Yes, I do. It is sort of dog-eared,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

but it was dog-eared before I got it.

Q Now, I show you a copy of Plaintiff's Exhibit 111 and that document contains as one of the pages a profit and loss statement for ISL showing a net loss for the year of $395,000. Now, I ask you to explain to the jury and to his Honor when you recall first receiving a copy of that document.

A This document was annexed to the memory stacks report--

Q Which is Plaintiff's Exhibit 11?

A Which I received under cover of Don Clarke's letter of March 2nd. I received it, according to my date stamp, on March 5th. That was the first time I ever saw that document and the first time I ever saw the figures referred to therein.

Q Now, I believe Mr. McConnell called your attention to the note at the bottom of page 3 of Plaintiff's Exhibit 11, which says, "This business plan should be read in conjunction with the report on the proposed acquisition of ISL Seawell Barbados by Plessey Incorporated attached," and I ask you if Plaintiff's Exhibit 111 is the document that was attached to Plaintiff's Exhibit 11?

A Yes, sir, it was.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q To the best of your recollection, you did not receive either of these documents until you received them with Mr. Clark's memorandum dated March 2nd which you receive on March 5th; is that correct?

A That is a fact.

Q Thank you.

Mr. Sinsheimer, would you explain to his Honor and to the jury when for the first time you realized that Mr. Frey had reported to the English board on the need for an additional $200,000?

A Well, we were for the first time -- the first time I had anything -- when I knew that at all was I think two weeks ago today when you and I and counsel were together going over some of the documentation for this case. I went through all of the minutes of the board of Plessey Company in order to determine whether in fact in Seth Dubin's searching and in the UK -- he went over there for two or three weeks to look for these documents -- he had found everything and I found aboard minute-- a minute dated the 27th of February, 1970.

Q That's theminute which Mr. McConnell introduced in evidence this morning? I don't recall the number of it.

A Yes.

MR. McCONNELL: 110.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Plaintiff's Exhibit 110?

A It's one where Frey reported tha we would need another $200,000. I had absolutely no recollection of this when I saw it two weeks ago. That was what made me start an investigation, and that's how I am so positive of these dates because I had done this in the last few days.I had a long telephone call with Frey.

I had -- as a matter of fact, I asked Frey to investigate at his end and find out precisely what happened and to Telex me back. I have a telephone call and a Telex from him as to precisely how it happened.

Q Did you ask Mr. Frey whether he had any recollection of discussing this subject with you back in February or March of 1970?

A You see, what had happened was that Crocker and Don Clarke had gone down to Barbados and they were in Barbados on the 18th and the 19th of February. They got back to New York on the 20th of February and wrote this report, the joint report.

Q Where --

A On the 19th of February I was in England. I left for England on the evening -- in the morning of the 19th because John Clarke had been with the company 21 years and the chairman was giving him a party and a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

watch. All of the directors went there. I then got back on Sunday night and Crocker had already left. Crocker left on the 20th, carrying my copy of the report that he and Don Clarke had sent to England, but he never saw me there. Then Eric Frey has a responsibility to the company for acquisitions, as I think I testified. As a normal matter our board is usually considering eight or nine proposals. Eachone of the managers comes up with different proposals for his own business. The agenda automatically carries forward each and every acquisition so that the director of finance reports on it. As a normal course he checks with the sponsoring division. In this case it was Crocker. He knew Crocker had been down there. He checked with Crocker on the Friday morning of the 27th what was the current status and Crocker said that he had the profit and loss numbers and that they were going to lose $400,000, but Crocker didn't even know the significance of that because he hadn't taken part in any of the discussions. Frey then advised that he figured out, on the basis of his prior -- his prior dealings with ISL, that we need more money, so he reported -- as he reported the fact that 20 days before we had decided Plessey, Inc. was going to buy it rather than Plessey, Ltd., that the company was going to need $800,000 more, but this meant --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: You mean $800 instead of six?

THE WITNESS: $800 instead of six. Our board doesn't have to decide those things. I mean, as a manager of a major business I have a right to spend working capital and I will have the right to commit working capital. We have a fairly large amount of working capital now. I don't have to go to the board to ask for more inventory or to extend the credit terms to increase the receivables. That's how Frey knew and reported to the board.

Q Do you have any recollection of at any time between February 20 and March 2 discussing with Mr. Clarke the results of his trip to Barbados?

A No.

Q Was Mr. Clarke at any time involved in the financial investigation for purposes of the acquisition of ISL?

A No.

Q Do you recall having any discussion with Mr. Clarke at any time concerning the financial condition of ISL?

A You mean the numbers? No. No.

Q Was Mr. Clarke involved in any of the negotiations leading up to the decision that $600,000 would be needed on the basis of a $200,000 loss for the year?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A No.

Q Was Mr. Crocker involved in any of those --

THE COURT: What is that question again? May I hear that last question; I didn't follow you.

Q Was Mr. Clarke involved in any of the negotiation sessions or any of the discussions among the Plessey people as to the basis on which we were agreeing to put $600,000 in the business?

A No.

Q Do you have any recollection of Mr. Crocker being involved in any of the financial negotiations in connection with the acquisition of ISL?

A No.

Q Did you ever discuss with Mr. Crocker the basis upon which we had agreed in the original contract to contribute $600,000?

A No.

Q Mr. Sinsheimer, do you have any recollection of what the net worth of ISL was as of February 4, 1970, when we signed the contract?

A It was a negative net worth.

Q It was a negative number?

A Yes.

Q Would you explain to the jury and his Honor what

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that means with respect to the amount of new working capital that would be needed in relation to the amount of money that the business loses when it has a negative net worth?

THE COURT: I don't understand that question. I don't know that anybody does.

MR. MALONEY: I will withdraw the question.

THE COURT: As I understand it, Mr. Sinsheimer, it's already been testified here that it was only by the putting in of thevalue of that house that kept ISL in cash up to the date of closing; isn't that right?

THE WITNESS: Yes.

THE COURT: There was no mystery about all that, and when the date of the closing came around, that had been exhausted; they didn't have any cash; is that right?

THE WITNESS: I think that's absolutely right.

THE COURT: The other thing I would like to ask you is, your interest, or rather, Plessey's interest in acquiring this outfit wasn't because they had any particular net worth or negative net worth; your interest in acquiring it was because you believed and the people in England believed thathaving this unit might be useful in the conduct of their business and perhaps the opening of a development of the U.S. business; is that correct?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: I think that's essentially right.

THE COURT: Is that a fair statement?

THE WITNESS: I think it's essentially right, except the net worth question and the continuing loss question goes to the value of the business, not necessarily to its -- to whether we want to go ahead with it or not.

THE COURT: I mean, you could have a business, a little business in a building down in Barbados that wasn't worth a hoot to anybody except to possibly somebody who was making the same or similar kinds of mousetraps and could use it as a facility; isn't that right?

THE WITNESS: Sure.

THE COURT: All right.

Q Well, Mr. Sinsheimer, I believe you testified that in arriving at the purchase price for the business you were considering the amount of money that it would take for Plessey to build their own factory and train their own people and start from scratch; is that correct?

A Well, what we did was we had a business, for which I was responsible, which was in the tele-communications business in Brazil. Brazil is a reasonably good low cost labor area. Right next door the Burrows Corporation had a matrix stringing company, so we were looking into putting down a similar kind of facility that we had in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Portugal and Malta in Brazil, so tht enaswer is yes.

Q Let's go back to the closing, and I believe we were up to Mr. Albert or Mr. Dubin calling you back the second time with second proposals after your first instruction to them had been notto close the transaction. Would you tell us --

A There were a whole series of conversations which I really can't -- I almost have to --

Q All right, what was the net effect of all the conversations?

A The net effect --

THE COURT: I think the jury and I would be a little interested because where I am left was I think you said, oh, let's forget it; let's forget it.

Do you remember what the next statement happened was when they came back to you?

THE WITNESS: They called back and they said, "All this work is going into this thing." Milton Albert then said to me -- he said, "Look, if we can get them to pay interest on theworking capital,the $200,000, you know, would that satisfy you?"

And I said, "I don't think it would, Milton," because we thought it was losing at a rate of 40,000 -- of $20,000 a month; it's doing worse; I have got my --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

now, I have got my suspicions about how good these people are. I don't know whether they are good or bad, but I certainly like the fact that I had been told one loss figure for December 31 and it turns out to be double, and I didn't like the fact that I was told that they were going to lose only $20,000 a month and they were losing almost double that, if the '74 applies to two months. I said, "As far as I am concerned, unless we can take over management right away, forget it."

I believe that's what I said. They came back again -- I don't know whether it's in the same conversation or later -- and they tried to nullify me. It ended up that I said, "If in fact you can do a deal where they pay the 10 per cent interest and we can take over at the end of May instead of in June, then I will go ahead with you."

THE COURT: That would be which month? The measuring year began April --

THE WITNESS: Your Honor, that would be the second month, but, your Honor, I did not use the second month. I specifically said to Seth Dubin and Milton Albert, "I want to be able to take over if they don't make it in May," and that was my words to them.

THE COURT: By the way, we heard some testimony

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

while you were having this bad day on the telephone there was a problem with the Data 100 loan. Was that also going on?

THE WITNESS: My recollection of the Data 100 situation is extremely -- I don't think I really ever got into it in depth. I think that Milton Albert did. There was never a discussion about Data 100 on the telephone that day.

THE COURT: As far as you were concerned.

THE WITNESS: Nobody mentioned it to me. Nobody mentioned it to me.

THE COURT: Right.

THE WITNESS: I am not terribly familiar with that arrangement. I know there was an arrangement and the only way I am familiar with it is by reading some of the documents. I don't believe I was very familiar with it then. I am more familiar with it today on the basis of having read some of the documents than I was then.

THE COURT: Well, there was some testimony on the plaintiff's side here that the Data 100 loan was due by -- I think it was March 6th, and that there was some testimony to the effect that perhaps the $200,000 to pay that off would not be paid. I think it was the National City Bank, but you have no recollection of that?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: No, sir.

MR. MALONEY: All right, your Honor?

THE COURT: Go ahead.

BY MR. MALONEY:

Q Mr. Sinsheimer, I show you a copy of Plaintiff's Exhibit 5 and I ask you if you can identify that document.

A This is the amendment signed by Milton Albert for Plessey Incorporated and Allan Kovar for International Scientific with respect to the making -- with respect to making the extra money available at 10 per cent interest after $200,000 and shortening the period to begin on May 1 when we had to make $15,000.

Q What was your understanding under the terms of the amendment as to Plessey's right to assume management control?

A It was my understanding that we have the right to assume management control as I had instruced on June 1 if in fact the May numbers or whatever it was, the May numbers did not come up to $15,000.

THE COURT: And that would be by taking the profits, if any, for the month of May and adding to them any profits for March and April?

THE WITNESS: Yes.

Q Mr. Sinsheimer, I show you a copy of Plaintiff's

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Exhibit 26 in evidence and I ask you if you can identify that document?

A It is a letter dated June 9 by which I exercised our rights under paragraph -- the company's rights under paragraph 5-D to take over management of the business.

Q The first paragraph states:

"Reference is made to the agreement dated the 4th day of February, 1970, between your company and the Plessey Company, Ltd., which agreement was thereafter assigned to, and assumed by Plessey Incorporated, and the letter agreement dated March 2, 1970, between your company and Plessey Incorporated."

Mr. Sinsheimer, I ask you when for the first time did anyone ever say to you that Allan Kovar may not have had authority to sign the amendment at the closing on March 2?

A Nobody ever said it to me. The first time I ever heard of it was in the complaint in this action.

Q Do you recall what the date of that complaint was?

A Some time in --

THE COURT: You fellows must know that. I don't know why you are bothering Mr. Sinsheimer with that.

MR. MALONEY: There was a prior action.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: I understand. Out in Chicago?

THE WITNESS: Yes.

MR. MALONEY: Yes.

THE COURT: You gentlemen know when that was.

A I never heard about it until --

MR. McCONNELL: October, '71, I believe.

A I never heard of it until it came up in this litigation.

Q When for the first time did anyone ever tell you that Plessey had assumed management control one month early under the terms of the March 2 amendment?

A Not until the commencement of this litigation.

Q Would you repeat your answer, Mr. Sinsheimer?

A Not until the commencement of this litigation.

Q I believe you testified you had various telephone conversations with Mr. Carlen, as well as a meeting with Mr. Carlen on July 13, 1970; is that correct?

A I think I had five or six telephone conversations, maybe more, with Mr. Carlen.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T5 Q At any time during the measuring year did Mr. Carlen ever say to youin words or substance that the March 2nd amendment was not valid because Allan Kovar did not have authority to sign it?

A No, sir.

Q Did Mr. Carlen or anyone else ever say to you during the measuring year that the March 2nd amendment was invalid because it had not been approved by the board of directors of ISL?

A No, sir.

Q At any time during your telephone conversations with Mr. Carlen did he ever say to you he thought Plessey had assumed management control one month early under the terms of the amendment?

A No, sir.

Q I believe you testified that following your meeting in your office with Mr. Carlen and Mr. Shapiro on July 30 that you agreed with Mr. Carlen to keep him advised on an informal basis if he called you from month to month as to what was happening in the company?

A Yes, sir.

Q Did you and Mr. Carlen speak on a regular basis during the balance of 1970?

A I don't know whether it was regular. It certainly

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

wasn't every month. One month he would call and then he would skip a month. I think in one of the conversations he talks about the profits for two months.

THE COURT: Did you ever call him?

THE WITNESS: No, sir, he always called me.

Q During any of those later telephone conversations did Mr.Carlen ever claim that the March 2nd amendment was not valid for any reason?

A No, sir.

Q Did Mr.Carlen in any of those later telephone conversations ever claim that the Plessey Company had assumed management control one month early?

A No, sir.

Q Did he ever being up any discussion of the meaning of the word "average" with you in any of those telephone conversations?

A No, sir.

Q Mr. Sinsheimer,I show you what has been introduced in evidence as Plaintiff's Exhibit 22 and I ask you if you can identify that document?

A Yes, this is a letter addressed to Allan Kovar dated 10th of December, '71.

Q December or September?

A September, excuse me, '71, which advises or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

does two things. It says,first of all:

"We are now in receipt of the certified audit of Messrs. Price, Waterhouse & Co. in respect of the operations of International Scientific (1970) Ltd. during the measuring year. This audit shows that a substantial loss was incurred during said measuring year."

It further goes on to state:

"In addition, we are in receipt of an audit certified by Messrs. Price, Waterhouse & Co. for the year ended December 31, 1969. Such audit shows a substantial discrepancy in both the profit and loss statement for the year ended December 31, 1969, and for the balance sheet at that date as compared with the profit and loss account and balance sheet which you warranted in the agreement of February 4, 1971."

So, in essence, we put them on notice that we believed that the balance sheet and profit and loss for the year that they had warranted was in error.

Q Staying with the measuring year report, do you have any recollection whether or not you enclosed copies of the reports with your letter?

A I do not.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q To the best of your recollection did you ever refuse a request by ISL or Mr. Kovar for a copy of the measuring year report prepared by Price, Waterhouse?

A There was never a request. If there had been, I would have sent it.

Q You never refused to give them a copy of the year-end report of the measuring year?

A No, sir.

xx (Defendant's Exhibit BC marked for identification.)

Q Mr. Sinsheimer, I show you a copy of Defendant's Exhibit BC for identification and I ask you if you can identify that document?

A Yes, this is the December 31, 1969, balance sheet and profit and loss statement of International Scientific, Ltd. as prepared by Price, Warerhouse & Company, chartered accountants, Barbados.

Q Who requested Price, Waterhouse to prepare that report?

A That I don't know. I presume that Milton Albert did, but I can't swear to that.

Q Does that report cover the calendar year 1969?

A It purports to, yes.

MR. MALONEY: I offer the document in evidence.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. McCONNELL: Same objection.

MR. MALONEY: I withdraw the offer at this time, your Honor.

THE COURT: I have a poor copy. I can't read it, anyway.

MR. MALONEY: That copy isn't clear?

THE COURT: No, the figures are not clear.

I think this is a good time to stop. It is after four. We will adjourn now for the day. Tomorrow we meet at 10 o'clock sharp. Have a nice evening.

(Adjourned to March 19, 1974, at 10.00 A.M.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

SCIENTIFIC HOLDING COMPANY, LTD.
vs. 72 Civ. 4040
PLESSEY INCORPORATED.

New York, March 19, 1974;
10.00 A.M.

Trial resumed.

(Jury in box.)

THE COURT: Good morning, ladies and gentlemen. Nice to see you this morning.

I have a problem, which all we judges have these days; I have another thing I have to do this afternoon around half-past three. I will excuse you a little earlier this afternoon. You will be glad of that. You have a lot of things you want to do.

You may proceed, Mr. Maloney.

W A R R E N J. S I N S H E I M E R, resumed.

CROSS EXAMINATION CONTINUED

BY MR. MALONEY:

Q I believe you gave some testimony yesterday concerning the days you were in England in February. Overnight did you check your passport to verify the dates on which you were in England?

A Yes. I arrived in England February 20, 1970,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and left England February 25, 1970.

Q Do you recall what days of the week those would be?

A I believe February 20. I left on the 19th. I got there the morning of the 20th. I believe that was a Friday, and, therefore, the 25th would be a Wednesday.

Q At any time during your stay in England do you have any recollection of meeting with Mr. Crocker?

A No, sir.

Q Do you have any recollection of discussing with Mr. Crocker between those dates on the telephone or otherwise the results of his trip to Barbados?

A No, sir.

Q I believe yesterday I asked you a series of questions concerning whether or not anyone had complained that the March 2nd amendment was invalid because Mr. Kovar lacked authority or was there anyone who complained that the takeover was a month early, and your answer is that you had not.

Did you receive any other complaints from anyone associated with ISL during the measuring year concerning the assumption of management control?

A We received two complaints during the measuring year. The first one was at a meeting with Mr. Carlen

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and Mr. Shapiro, in which Mr. Carlen -- I think that was the 13th of July -- in which Mr. Carlen told me that he thought it was a bad business judgment on my part to take over the business. And then some time during the very end of the measuring year I got a long letter from a lawyer -- I think his name was Matthews -- whom I never heard of before, and who indicated that he was a stockholder of ISL, and he ended up with a great series -- he started the letter, I think, asking for information as to whether he was properly informed, and then he went on with a whole series of things that he alleged that the company did wrong, including the wrongful takeover of management. But he didn't explain what reasons that he was giving,as far as I recall the letter.

xx (Defendant's Exhibit DQ marked for identification.)

THE COURT: You said the name was Matthews? Could it have been Murray?

THE WITNESS: Yes, sir, it could have been.

xx (Defendant's Exhibit DR marked for identification.)

Q Mr. Sinsheimer, I show you Defendant's Exhibits DQ and DR for identification and I ask you if you can identify those documents?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes. DQ is a copy of a letter which I received from Mr. Matthew E. Murray, dated the 22nd of February, 1971, and DR is a copy of my answer dated March 10, 1971.

Q How much time was left in the measuring year at or about the time that you received Mr. Murray's letter?

A Approximately a month, I guess.

MR. MALONEY: I offer them in evidence.

MR. McCONNELL: No objection.

xx (Defendant's Exhibits DQ and DR received in evidence.)

Q Following the measuring year did there come a time when we completely closed down the plant in Barbados, Mr. Sinsheimer?

A Yes.

Q Do you recall when that was?

A I don't recall specifically. It was some time in '73, early in 1973.

Q Between the time that we had acquired the facility in March, 1970, and the time we closed it some time in 1973, had we ever been able to operate that facility at a profit?

A No, sir. The losses had always been substantial.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. MALONEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. Sinsheimer, do I understand correctly that it is your position that after the takeover of management by Plessey you had no duty to maximize profits?

A No, sir, that is not my position.

Q That is not your position?

A My position is that we had a duty to run the business as a reasonable man would run his business in order to make a profit out of it.

Q Well, then, you do concede that you had a duty to attempt to earn profits from that business?

A Yes, sir, and we did.

Q And part of that business was cable harness and electronic sub-assembly work? Isn't that the fact?

A The testimony so indicates. I am not certain.

Q But notwithstanding that and notwithstanding that the contract provided that that was to be part of the business from which profits were to be earned, Plessey after taking over discontinued those two lines of the ISL business? Isn't that the fact?

A Which is the second line, Mr. McConnell?

Q Sub-assembly work.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't know anything about that.

MR. MALONEY: I don't think there has been any testimony with respect to any sub-assembly work having been terminated.

THE COURT: I don't, either. And on the harness, as I understand the testimony, that was taken out of Barbados and put in Brazil?

THE WITNESS: My understanding, your Honor, having checked on that, that is not so; it was taken out of Barbados because it could not earn a profit. It never went to Brazil. The Brazilian people, from hearsay, came up and didn't want to take it.

THE COURT: So it was discontinued?

THE WITNESS: Yes, because we couldn't make money on it.

Q Who told you vou couldn't make money on it?

A Our people.

Q Who is "our people"?

A Mr. McConnell, I don't know. I was told by people who work for the Plessey Company that we couldn't make a profit. I was there to make a profit.

Q On cable harness work?

A Yes.

Q Did you ever see any financial analysis

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

about your cable harness work showing that you couldn't make a profit?

A No.

Q And you can't remember who told you that?

A I presume it was Milton Albert or Donald Clarke or Mr. Gretten.

Q You didn't even know about the decision to discontinue the cable harness work when the decision was made?

A I probably did not.

Q Wasn't that your testimony yesterday?

A That was and is my testimony.

MR. McCONNELL: Excuse me, your Honor, I am looking for a particular report. I will go on to another point. I will find it.

Q Did I understand you to testify yesterday that Plessey had been unsuccessful in its attempt to penetrate the U.S. market?

A Well, that is not wholly accurate. I think I did testify that we got a large order from Digital Equipment Corporation, but other than that we had not been successful. That is correct.

Q In your preliminary discussions with Mr. Kovar you mentioned that fact to him and also expressed surprise at the fact that ISL being an offshore facility had been

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

able to establish a customer base in the United States market? Is that right?

A Yes, sir.

Q And, of course, that was one of the things you were or you would acquire if the acquisition went ahead?

A Yes.

Q ISL's customer base?

A Yes.

Q You knew they were doing business with the principal computer and peripheral customers in the United States market?

A So I was given to understand.

Q I believe your testimony was that you wanted this business to be run by Plessey?

A We were buying the business and obviously we want to manage it.

Q And the first contract draft so provided?

A Yes.

Q That Plessey would run this business during the measuring year?

A Well, it didn't provide it would not run it, so the opposite of that is that it would run it, yes.

Q Well, it provided that it would continue the business in good faith either itself or through a sub-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

sidiary?

A Yes.

Q And the ISL principals objected to that?

A So I believe.

Q Didn't you testify yesterday that they said in effect that since the contract price was based largely on an earn-out, that it was reasonable on their part to want to remain in management in order to insure that the profits were earned?

A That is right.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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Q And I believe you further testified that --

MR. MALONEY: I would object, your Honor.

THE COURT: This is leading. Do we have to go through what he testified to before? I think we have all that. I would rather not go through it again.

MR. McCONNELL: All right.

Q Was it your understanding that under the original agreement, that is, before the March 2nd amendment --

THE COURT: You mean the agreement as signed?

Q The agreement as signed and as amended by the February 18th letter, was it your understanding that under that agreement ISL management had until June to make 15,000?

A That is my understanding, yes.

Q It is your position that they had to make 15,000 and they couldn't average June and July, that is your position?

A That was my intention.

Q Isn't it the fact that you knew, based on the analysis that had been made of ISL, that the company would likely make $15,000 profit in June?

A No, it was not.

Q You knew the company would be at break-even by the time it reached $135,000 of sales, did you not?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Wait a minute. How could he know that? He might have hoped that.

Q I show you Plaintiff's Exhibit 10, which is Mr. Osborne's report, and ask you if that does not indicate that the company, assuming a January start, would be at break-even by the time they reached sales of $135,000?

A If you say so, Mr. McConnell, I would agree with you. I think I also testified I never saw that report.

Q You never saw Osborne's report and you never saw Clarke and Crocker's report.

A I saw Clarke and Crocker's report on the 5th.

Q But after the deal had been closed?

A Yes, sir; that is precisely right.

Q That is your testimony?

A That is my testimony.

Q It is your testimony that you never saw Crocker's report of February 25th, is that right?

A I saw Crocker's report of February 25th on March 5th.

Q But not until after the closing?

A That is correct.

Q And you never saw or heard of Frey's report to the English Plessey board of February 27th?

A Yes, I did. I heard about that two weeks ago yesterday.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q But not until then?

A That is correct.

Q And Mr. Frey was one of the three members on this three-man committee that was making the acquisition, isn't that right?

A Absolutely, yes.

Q He co-authored your report of January 9th, isn't that also the fact?

A Absolutely.

Q But it is your testimony that Frey never told you about his report to the English Plessey board?

A That is my testimony and that is the fact, sir.

Q Not only didn't you see any of these reports, but it is your testimony that neither Crocker nor Clark reported orally to you on their visit to the Barbados facility in February?

A Not before the closing; that is correct.

Q Plaintiff's Exhibit 111, which you say you never got a copy of until March 5th, which has attached to it the statement for ISL for the year ending 1969, is also shown as going to Mr. Dubin, besides yourself, is that right?

A If you say so, sir.

Q Do you want to look at the document?

A If you say so, that is fine.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Who is Mr. Dubin?

A He was the company's counsel.

Q It also shows as going to Mr. Albert?

A That is correct.

Q And that is the same gentleman--

MR. MALONEY: Your Honor, again we will stipulate that whatever the distribution says, it says. I think we ought to get whether Mr. Sinsheimer has asked any of those gentlemen when they saw the report and all of those gentlemen are going to come and testify.

THE COURT: I do think Mr. McConnell, I have the impression that we have gone into this in some detail before on direct examination.

MR. McCONNELL: I think we did so far as Mr. Sinsheimer, but I don't know that we established that Albert and Dubin also received copies ofthis report. They are shown on the distribution list.

THE COURT: I don't think there is any problem with that. He isn't going to quarrel with that.

Q I believe you testified that in your conversation with Mr. Albert he said two things --

THE COURT: If he did testify to that, we already have it in the record. What is your question?

MR. McCONNELL: It is just preliminary, your Honor.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: I know, but let's move along.

Q When Mr. Albert, according to your testimony, said that the business had lost 400,000 rather than 200,000, did he give you any breakdown of that $400,000 loss?

A No. I answered the question.

Q I didn't hear you.

A I said no, not to my recollection.

Q So, so far as you knew, at the time you told him to call off the deal, you didn't know what the composition of that loss was?

A No, I don't believe I did.

Q An you didn't know whether it included $37,000 of debenture interest?

A No.

Q Picked up in December?

A I did not.

Q And you didn't know whether it included $75,000 worth of --

THE COURT: If he didn't know, he didn't know. Why do you have to keep repeating all these things. He said he didn't know what made it up so, obviously, he didn't know.

Q Now, when Albert said that the business had lost $74,000 for the two-month period, January and February, did

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

he tell you that that figure included $19,000 of legal expense?

A No.

Q You had agreed under the contract to pick up that legal expense, had you not?

A I don't know what legal expense you are referring to. Under the contract we had agreed to pay some legal expenses of the prior ISL operation.

Q Of the acquisition?

A Yes.

Q Did Mr. Albert tell you that that $74,000 included $17,000 of back interest?

A No, I don't believe so.

Q Did Mr. Albert tell you what the sales for February were?

A I don't believe so, no.

Q So, without any --

THE COURT: I don't like that question the way it starts. He has answered the question that he didn't know. It is up to the jury to draw the conclusion.

MR. McCONNELL: Okay.

Q After Mr. Albert's call, did you make any attempt to get in contact with Mr. Frey?

A No.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Or Mr. Crocker?

A No.

Q Or Mr. Clarke?

A No.

Q Isn't it a fact that you actually signed the February 4th agreement without having a statement, an ISL statement for the year 1969?

A I believe that is so.

Q Notwithstanding the fact that the contract read--

THE COURT: Please don't argue with the witness. If he says "That's right", you are bound by his answer.

b2

Q When Mr. Carlen wrote you on June 17th and said that the ISL people were going to look to Plessey as trustee of their rights, what did you understand him to mean?

A I understood him to be in error. I understood that he was trying to impose a fiduciary relationship which didn't in fact exist.

Q And that is what you purported to reject in your letter of September 22nd?

THE COURT: I don't think he purported. He did, didn't he?

MR. MALONEY: Yes, sir.

Q You said you rejected that notion?

A Yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: That is right.

Q I show you Plaintiff's Exhibits 6 and 7, which are the telexes. Plaintiff's Exhibit 6 being Mr. Dubin's telex to you containing the suggested language by Mr. Lewis to be included in the contract and Plaintiff's Exhibit 7 being your reply thereto.

Mr. Lewis uses the words "average profits", does he not?

A He uses the words "Do not average $15,000 per month."

Q Commencing with the third month?

A Commencing with the third calendar month.

Q In your reply back you delete the word "average"; is that right?

A I am just trying to compare them because they are not totally the same. ISL profits are not at least 15 k dollars per months in any of the ten full measuring months commencing with.

Q That pretty clearly would require that ISL had to make at least 15,000 in any month starting with the period?

A That was my position.

Q And there isn't any ambiguity in that language?

THE COURT: No, no, no.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q But, in fact, the word "average" gets back into the contract, does it not?

A Yes.

Q It is in the final draft?

A Yes.

Q And the word "average" also appears in the March 2nd amendment?

A Yes.

Q In making your report to the Plessey board in January in which you strongly urged the acquisition of ISL as a base for your North American matrix operation, notwithstanding the fact that it was in dire financial straits and notwithstanding --

MR. MALONEY: I object, your Honor. Mr. McConnell is coming up.

THE COURT: I wish you wouldn't do that, Mr. McConnell. You are. Just ask your questions and get your answers and stop the "notwithstanding" and all this business.

Q When you made that report to the English board, who had you talked to about the ISL facility?

A About the facility?

Q Yes.

A Mr. Kovar, I had heard verbally what the Osborne feeling was about the manufacturing business and I guess

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Erik Frey,and I guess that's about all.

Q I believe you testified yesterday --

THE COURT: Again, let's not go and repeat all he testified yesterday. That is what I am trying to avoid.

MR. McCONNELL: I am not trying to repeat it.

THE COURT: What is your question?

Q The question is whether or not you were mistaken when you said that Frey's report to the board on February 27, 1970, was merely information?

A No, sir; I was not.

Q Doesn't Plaintiff's Exhibit 110, the minutes of that meeting, state with respect to the suggested changes that these changes were approved?

A I don't know. Letme see.

Q Would you look at that document?

A Yes, but the document so states, but these were changes that had already been made.

The first change was the substitution of Plessey, Inc. for Plessey Limited, which had already been done. It is my testimony that neither of these affairs had to come back to the board.

Q What was the second change?

A The second change was that the working capital to be immediately provided was now likely to be in the region

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of $800,000 and there was no request at that meeting for any authorization because that authorization and authority I already had.

MR. McCONNELL: That is all.

MR. MALONEY: I have no questions, your Honor.

THE COURT: Thank you, Mr. Sinsheimer. You are excused.

(Witness excused.)

MR. MALONEY: I don't think we have the two letters marked, even though they were received in evidence, your Honor.

(Defendant's Exhibits DQ and DR received in evidence.)

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MR. McCONNELL: Mr. Clarke.

D O N A L D C L A R K E, called as a witness, having been duly sworn, testified as follows:

MR. McCONNELL: Your Honor, I am calling Mr. Clarke under Rule 43 as an adverse witness.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. Clarke, would you state your full name, please?

A Donald George Clarke.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Where do you reside, sir?

A 44-09 244th Street, Douglaston, New York.

Q Are you an officer of Plessey, Inc., the U.S. company?

A Yes.

THE COURT: What office do you hold, I can't wait?

THE WITNESS: Vice president.

THE COURT: Vice president, okay.

Q Are you also an Plessey Electronics?

A Plessey Electronics Corporation no longer exists.

Q At the time of this transaction in 1969, 1970 and 1971?

A Yes.

Q Were you an officer of Plessey Electronics?

A I was.

Q What office did you hold?

A President.

Q Are you also an officer of Plessey Memories Corporation?

A No, I don't think so.

Q When did you first learn that the facility at Barbados was going to be under your administration?

A This would be some time around February or March,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I would think. I don't know that it had been finally decided that it would come under my jurisdiction. It was that I was representing Mr. Sinsheimer when he couldn't make visits to Barbados, I went as his adviser and representative.

THE COURT: Keep your voice up a little bit. I want to be sure the ladies and gentlemen can hear you.

Did you hear that last answer?

JUROR NO. 1: I did.

JUROR NO. 4: Yes, sir.

THE WITNESS: I went on Mr. Sinsheimer's instructions. I don't know at that time that I had been advised officially that it would come under my jurisdiction. I was there representing Mr. Sinsheimer in the February visit.

Q Can you fix the date in February?

A Yes, it was February 17th to the 19th.

Q Who else was there from Plessey?

A There was Petey Hewitt and Norman Crokcer.

Q Mr. Crocker was who again?

A Mr. Crocker was in charge of the British Memory organization. That is the British Plessey.

Q Who is Mr. Hewitt?

A Mr. Hewitt was the general manager of the Portuguese memory plant.

Q What did you do when you were in Barbados for

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

those three days?

A The reason for the visit was that we were considering acquiring ISL and there was a little concern as to whether the Barbardian government were fully aware of our involvement and the reason for the visit down there was mainly to speak with government officials. In fact, almost all of the three days were spent visiting with the Prime Minister, the Attorney General, the officers of the Industrial Development Corporation. These were all government officials in Barbados and we wished to make them aware that we had an intention of acquiring ISL and getting information from them as to what would our position be should such an acquisition go through.

Mr. Hewitt was there, he did not take part in the discussions with the government. He was there as a manufacturing man to have a look at the facility from a manufacturing viewpoint.

b3

Q Do you recall preparing a report of your visit?

A There was a joint report prepared, yes.

Q Was that prepared --

THE COURT: A joint report?

THE WITNESS: By Mr. Crocker and myself.

THE COURT: You and Mr. Crocker, all right.

Q I show you Plaintiff's Exhibit 111, which is entitled

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

"Report on the proposed acquisition of ISL, Sea Well, Barbados, by Plessey Inc.," and ask you if that is the joint report that you and Crocker prepared?

A Yes, this is the report.

Q Is there attached to as a part of that document a statement of the income or loss for ISL for the year 1969?

A Yes, there is.

Q Where did you get that information?

A I believe it came from Mr. Hourihan, either Mr. Hourihan or Mr. Kovar.

THE COURT: Mr. Hourihan?

THE WITNESS: Yes, the accountant.

THE COURT: Hourihan the accountant. The jury and I just want to keep these names straight. Is that how the English would call him, Hourihan?

THE WITNESS: Yes.

THE COURT: Hourihan and Hourihan mean the same person. The Irishmen have different views on this.

THE WITNESS: At least this is not St. Patrick's Day today.

Q Do you recall when you prepared that report?

A Yes, very vividly. It was a very busy three days in Barbados and this report, we tried to start to put it together whilst we were there, but the time, you know, just

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

didn't allow and it was completed on the Friday. We came back to New York on the 19th. Friday was the 20th and Mr. Crock had to return to England on Friday evening and I know it was quite a rush to get this typed and completed before he left because he hand carried these reports back to England with him.

Q So, it would have been completed, then, some time around the 20th?

A The 20th, yes.

Q Did you make any oral report to Mr. Sinsheimer of your visit to Barbados?

A Not that I can recall. I know Mr. Sinsheimer was not in America when we returned from Barbados. I don't recall ever making any verbal report, no.

Q Do you recall a meeting with Mr. Clarke and Mr. Crocker at the spring joint computer conference and then following that having discussions with Kovar on the plane back to Barbados and at Barbados relative to the management of ISL?

A Yes. We returned from the spring joint computer conference on May 7th. We traveled to Barbados.

Q Isn't it the fact, Mr. Clarke, that you asked Mr. Kovar to agree to Parr having complete pricing authority?

A I don't recall that at that particular time.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q You don't recall it. Isn't it also the fact that you asked Mr. Kovar to agree to Hewitt having complete control of production at Barbados?

A The idea of Hewitt being in Barbados was to handle manufacture. I don't recall that particular conversation, but that could quite easily have taken place because that was the sole intent of Petey Hewitt there, to be head of manufacture.

Q Didn't you tell Kovar that you wanted to change the ISL facility into essentially an assembly type operation similar to the ones that Plessey had at Malta and Libon?

A That was the intention, but I don't know whether this conversation took place on May 7th because, as I recall, we sort of revised -- when I say "we", Norman Crocker and myself -- sort of revised the floor plan when we arrived at Barbados. That was submitted by Petey Hewitt on his plans as to how to reorganize that facility to make it more productive.

I don't recall having seen anything prior to that so I don't think I could have discussed it.

Q I am talking now about not only discussions at the spring joint computer conference but on the plane back to Barbados and even after you got to Barbados.

A After we got to Barbados, yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Didn't you, after you got to Barbados, tell Kovar that what you wanted to do here was to change this facility so far as the production layout into essentially an assembly type of operation similar to what you had going in Malta and Lisbon?

A Correct.

Q Didn't you also tell Kovar --

THE COURT: This is after they got to Barbados?

MR. McCONNELL: I don't know, your Honor, because they were--

THE COURT: All right. At the meeting or traveling to Barbados or even after they got there, all right.

Q Either at Barbados or earlier in your discussions, hadn't you told Kovar that you intended to establish a marketing facility at Boston or Maynard outside of Boston?

A Yes, this had been discussed, you know, even prior to that, the possibility of a Boston operation.

Mr. Kovar in one of the early letters had indicated that he felt it would be advantageous to have an operation on the mainland and service and repair facilities and design and development and test equipment. We were discussing that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T3 Q I don't believe Mr. Kovar mentioned a Boston facility?

A No.

THE COURT: Never mind that. He says he recalls that.

That is what you recall?

THE WITNESS: Yes.

Q Did you tell Mr. Kovar that it was your intention to not only transfer marketing to Boston, but also to set up a prototype and a customer service and repair facility and to have design engineering at Boston?

A This is a prototype facility and service and repair. We knew it would take time, because it does take months to set up such an establishment. But that was the intent, to have such an establishment set up in Boston.

Q Didn't you ask Mr. Kovar to agree to those things?

A I don't think Mr. Kovar disagreed with them.

Q The question is, didn't you ask Mr. Kovar to agree?

A I don't recall asking him to.

Q Didn't Mr. Kovar say to you, Mr. Clarke, that while this might make sense in Plessey's long range point of view that he felt it was going to depress profits short

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

term and, therefore, he couldn't agree to these changes because he had an obligation to ISL shareholders to maximize profits during the measuring year?

A I don't recall that conversation.

Q Didn't Mr. Kovar further state to you that if Plessey was prepared to pay the maximum payout under the contract, the 1,260,000 at the end of the measuring year, of course, he had no objection to your going ahead with these plans? Do you recall him saying that?

A I don't recall that at all.

Q Do you recall saying to Mr. Kovar that youfelt he had a conflict of interest?

A No, I don't.

Q Well, following those discussions, where did you go?

THE COURT: Now, wait a moment. You have got the jury and me guessing.

MR. McCONNELL: I got you from Atlantic City to Barbados.

THE COURT: You are down at Barbados.

Q How long did you stay at Barbados?

A We were there through the 13th.

Q And following the 13th where did you go?

A Back to New York.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did you report to Mr. Sinsheimer on your conversations with Kovar?

A Yes, I believe we did. I think we did.

THE COURT: "We" is you --

THE WITNESS: -- and Crocker.

THE COURT: You and Mr. Crocker.

Q Then did both you and Mr. Crocker go back to England?

A I believe Mr. Crocker went back on his own. I was in New York for a little while. I went over to England about May 20.

Q And on May 20 and on May 22 you drew up plans for the takeover of management by Plessey? Isn't that the fact?

A Well, the reason for my visit to England at that time was to meet Mr. Gretten, because Mr. Gretten I had never met and he was going to take over from Peter Hewitt; I also had the responsibility for the Garard record changer, so this was not a specific visit just to discuss ISL.

Q Whether it was a specific visit to discuss ISL, when you got there you did, in fact, have a meeting with people from Plessey about the proposed or contemplated takeover of management by Plessey, the takeover

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mmp4 Clarke-direct

of management of ISL?

A Yes, meeting in Towcester and in London.

THE COURT: Where is Towcester? Is it in London?

THE WITNESS: It is about 80 miles north of London.

Q I show you what is in evidence as Plaintiff's Exhibit 20 and ask you if you can identify that as your memorandum?

A Yes.

Q Who are the other gentlemen who are shown on that document as being in attendance?

A The listing at the top is not the people in attendance; it is the circulation.

Q Who are the people who are on the distribution or circulation?

A Messrs. Sinsheimer, Doust, Crocker, Albert, and Lutz.

Q We know who Sinsheimer and Albert are.

Who is Mr. Doust?

A He was the managing director of the Plessey components group and the memory division that Mr. Crocker was part of.

Q So Mr. Doust would have been Mr. Crocker's

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mp5 Clarke-direct

superior?

A Correct.

Q And who was Mr. Lutz?

A Mr. Lutz is my comptroller and office manager.

Q Who actually was in attendance at those meetings?

A I don't know whether I recall all of the names. Sweeney was in attendance; he was the comptroller of Norman Crocker; there were others in attendance at Towcester, and I believe there were one or two other people in the Strowger house meeting. I can't recall all of the names.

Q Wasn't it agreed as a result of those meetings that the takeover should take place as early in June as possible?

A We had no real control of the takeover. Mr. Sinsheimer was the only person who could decide. When we refer to takeover, what are we referring to? There are two areas covered by this report, first,that Mr. Gretten had to take over from Mr. Hewitt. Mr. Hewitt had already decided to return to Portugal or asked to be returned to Portugal. He was unhappy with the situation in Barbados, and his wife was not at all pleased to stay on the island, and this goes back to the visit that we made in May after the Spring Joint Computer Conference. And Mr. Crocker had suggested that Mr. Gretten replace

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

him.

Q So this meeting only had to do with the replacement of Hewitt by Gretten?

A That was the original intent of my going, was to meet Mr. Gretten in the first instance, because I never met him before, and, secondly, assuming that I approved of or agreed with Mr. Gretten being appointed, the arrangements then to be made for Mr.Gretten to move to Barbados.

Q Well, didn't the meetings and the discussions go beyond Mr. Gretten?

A Yes, they did. There was dissatisfaction. Mr. Crocker felt -- and he had reports from Mr. Hewitt that I had not seen and there had been telephone conversations between Mr. Hewitt and Mr. Crocker, which one can understand, because Mr. Hewitt had always worked for Mr. Crocker -- and it was felt that the Barbados operation was not turning around as well as we had hoped and lack of faith in management.

Q Well, in fact, starting from scratch it reduced the profit from $25,000 in March to $10,000 in April, with a turnaround showing a profit in May of $6000-plus? Isn't that the fact?

A I don't know if that is the fact.

Q You know that even with the infusion of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

fresh capital it was going to take at least three months before the business became profitable, didn't you?

A I don't think I could say that I knew how long it would take before that business became profitable.

Q Well, then, if you didn't know that --

THE COURT: He can't say that he knew that.

Q In any event, depending upon what Mr. Sinsheimer said, your memorandum of May 25 contemplated that a take-over team would go to Barbados some time early in June? Is that not the fact?

A Yes, I mean as to whether Mr. Kovar stayed there or not, Mr. Gretten would go early in June.

THE COURT: I am not quite clear, Mr. Clarke, about this. This memorandum, Exhibit 20, refers to the action taken at the Towcester and Strowger house meetings. Who asked you to do all this? Who asked you to go there and meet with these fellows and come back with these recommendations that are contained in this memorandum? Do you remember?

THE WITNESS: I don't believe I was given any instructions, and probably when I left for England it was not thought that that would all arise after the meetings in England. As I say, I went to meet Mr. Gretten; I didn't know that I would be meeting with Doust when I went to

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

England. I knew I was going to Towcester.

THE COURT: I get the general impression from this memorandum that you wrote that the thing was there would be a takeover in Barbados and the takeover would be the takeover from Allan Kovar and it would be as early in June as possible, depending on arrangements. Whose notion was that that that was necessary? Was that yours? Or were you acting on instructions from somebody else?

THE WITNESS: Mr. Doust was directly involved, and so was Mr.Crocker and myself.

THE COURT: You three in talking about it reached this?

THE WITNESS: We felt this was the best conclusion to arrive at.

THE COURT: When you made that decision, Mr. Clarke, did you have the contract before you?

THE WITNESS: I don't think so.

THE COURT: And you are not a lawyer?

THE WITNESS: No.

THE COURT: Like most of these other people who have been around here?

THE WITNESS: Exactly.

THE COURT: Is Mr. Crocker a lawyer?

THE WITNESS: No.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Is Mr. Doust a lawyer?

THE WITNESS: No.

THE COURT: Well, that is interesting. You are business people? Is that right?

THE WITNESS: That is true.

THE COURT: You three business people sat around and worked this thing up? You thought as business people this is what you wanted to do?

THE WITNESS: Yes, and the people we were sending, Mr. Sweeney and Mr. Lewis. Mr. Sweeney was the financial man for the memory, so he had a good idea of the Portugese and Maltese operations, and Mr. Lewis worked for Mr. Doust; he was in charge of the manufacture of the whole group, and it was felt he could be helpful in improving or changing what Mr. Lutz had suggested as to the revised plan, the lay-out to best epitomize the best production out of the Barbados facility.

Q I show you what has been identified as Plaintiff's Exhibit 21, which purports to be a memorandum from you under date of June 1, 1970, and ask you if you can identify that as having been prepared by you?

A Correct.

MR. McCONNELL: I offer Plaintiff's Exhibit 21 in evidence.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Would you show Mr. Maloney a copy of it?

MR. MALONEY: We have no objection.

xx (Plaintiff's Exhibit 21 received in evidence.)

Q You state: "Re Mr.Sweeney and Mr. Lewis visit to Barbados:

"Reference my memorandum May 25 concerning action arising out of the meetings held May 20 and May 22 and in particular Item 5."

Now, stopping there, the May 25 memorandum was this earlier report, Plaintiff's Exhibit 20, that we just have been referring to? Is that right?

A Yes.

Q Continuing: "I have reviewed this matter in detail with Warren Sinsheimer and Milton Albert and it has been agreed that as we originally planned Sweeney and Lewis are to visit Barbados with Frank Parr and D. Gretten at the time of the takeover. All that now has to be agreed is the actual date that this exercise takes place, and I will be in touch with you in this regard as soon as the necessary arrangements have been finalized."

Did you so report to Mr. Crocker?

A I did.

Q And did you as reported in your memorandum

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

review the details with Mr. Sinsheimer of your conversations in England on May 20 and May 22 which are reported in your May 25 memorandum?

A Mr. Sinsheimer had a copy of the report. You see, that paragraph 5 that youmake reference to says at the very last line the visit of Sweeney and Lewis has to be approved by W.J. Sinsheimer. No one had authority to ask anyone to visit that Barbados plant without the authorization of Mr. Sinsheimer. It fell in his geographic area that he controlled, and my memorandum of the 1st of June confirmed that he had agreed that the two gentlemen, Sweeney and Lewis, could visit the Barbados plant.

Q Now, going back to Mr. Gretten, did you advise Mr. Kovar that --

THE COURT: Are we back on this trip to Barbados now? Or is this some other time?

MR. McCONNELL: At any time.

Q Did you advise prior to the takeover Mr. Kovar that it was contemplated that Mr. Gretten would replace Hewitt?

A I believe so.

Q When?

A I believe this took place on that May visit. This is the first indication that I had from Hewitt that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

he was unhappy in staying in Barbados and wished to return to Portugal, and then we discussed, well,who would replace Hewitt. I am convinced that Mr. Gretten's name was mentioned, so Mr. Kovar would be in on that discussion.

4 Q I show you what has been identified as Plaintiff's Exhibit 77, which purports to be a letter by you under date of June 4 to Mr. Peter Hewitt.

Did you send that on or about that date to Hewitt?

A Yes.

MR. McCONNELL: I offer it in evidence, your Honor.

MR. MALONEY: No objection.

xx (Plaintiff's Exhibit 77 received in evidence.)

Q You state:

"Dear Peter:

"I understand from Patrick Tito that you telephoned him this morning and indicated that it might be advisable for him to make a visit to Barbados."

Who is Tito?

A He is the purchasing agent working in Farmingdale.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Tito was an employee of Plessey Electronics? Is that correct?

A Yes.

Q Hired by you?

A Yes.

Q And he had replaced Intersil insofar as the purchasing function of raw materials?

A Yes, but in between Intersil and Tito, Plessey Airborne Corporation had been handling the purchasing from a New Jersey location.

Q You go on to state:

"In view of the plans which Norman Crocker and I have for the future handling of the Barbodos situation, I cannot see any useful purpose being served in Tito visiting ISL, Ltd. at this time."

What were theplans which you and Norman Crocker had for the future handling of the Barbados situation referred to in your letter?

THE COURT: Wait a minute. I am a little confused as to thequestion. You want to know what the plans were which Crocker and he had at the time of this letter? Is that the question?

MR. McCONNELL: Yes.

THE COURT: You can answer that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

What plans did you and Crocker have?

THE WITNESS: We were trying to get the purchasing better organized than it had been in the past, and that was hence the hiring of Tito. But Tito had only joined us, actually came aboard on June 8. On June 4th he probably was in the plant, but it was the day he started, or just one or two days prior to that, andwe felt that Tito could be far better employed in taking over and progressing the delivery of equipment down to Barbados than going to Barbados then. He did go later. I think it was about September or October Tito made a visit to Barbados.

Q What were the plans?

A I can't recall any specific plans on it. It was just to get the purchasing better organized.

Q What were the plans, takeover plans that you and Crocker had been discussing back on May 20 and 22?

A I can't recall that.

THE COURT: You can't recall now what plans you and Crocker had for the future handling of the Barbados situation?

THE WITNESS: What was intimated.

THE COURT: You don't recall?

THE WITNESS: No.

Q Does that letter show a copy going to Mr. Kovar?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A No. It shows a copy to Mr. Crocker, Mr. Lutz, and Mr. Tito.

Q Why didn't you send a copy to Mr. Kovar?

A I don't recall.

Q Would it be because you had already been advised that Kovar was going to be removed?

A Well, that was a decision that I didn't make, and I am not too sure on the date Mr. Sinsheimer arrived at that decision.

Q I show you what has been marked Plaintiff's Exhibit 112, which purports to be a memorandum from you to Mr. Sinsheimer under date of June 4, 1970, and ask you if you prepared that document?

A Yes.

MR. McCONNELL: I offer it in evidence.

MR. MALONEY: No objection.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 112 received in evidence.)

Q Now, the date of this memorandum is June 4? Is that correct?

A Yes.

Q You state:

"Allan Kovar telephoned me today advising me

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that he had arrived in New York and had meetings set up with the Barbados Consul General Branford Taitt for this afternoon, and a meeting with the Customs Counseller for Friday, June 5th."

And then skipping:

"Allan Kovar intends to visit Chicago over the weekend to attend his daughter's graduation, and next week he will be visiting Magnavox, Fort Wayne, Indiana, in connection with the order which International Scientific, Ltd. has taken from Magnavox.

"Kovar asked me whether or not any decision had been reached with regard to the conversation which he, Crocker and I had when Crocker and I were last in Barbados when we indicated that we were not in agreement with the way Kovar was running ISL.

"I mentioned to Kovar that Crocker had reported to you directly on his return to the U.K. and that I had discussed this matter with you also when you returned to New York. And the position was now that you would in all probability be reviewing this whole situation with him, but that at the present time I was unable to make any comment as to what the company policy would be."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

You so reported?

A Yes.

Q In that phone conversation with Kovar on June 4th did you tell him anything about the discussions which had taken place in England on May 20 and May 22?

A I don't think so.

Q Did you tell him anything of the content of your memorandum of May 25, Plaintiff's Exhibit 20?

A I don't recall.

Q Continuing:

"He informed me" -- this would be Kovar -- "that the total May sales were approximately $144,000 and that he hoped to have available by Monday of next week the profit for the month of May. I would suggest that should these figures be available that you decide the course of action you intend to take with Allan Kovar and that this matter be resolved with yourself and he before Kovar returns to Barbados. On this basis it would then bepossible for me to arrange for Norman Crocker to make available his team from Portugal and Towcester, and for me to arrange that Frank Parr arrives at Barbados on the same date as Gretten, Sweeney and Lewis, this preferably to be the date following the dismissal

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of Allan Kovar."

Does this refresh your recollection that as of June 4 you knew that Kovar was going to be dismissed?

A I didn't know he was going to be dismissed. Only one person could decide whether Mr. Kovar would be dismissed, and that was Mr. Sinsheimer, and I think that memorandum speaks for itself. That decision had not been reached at that time.

Q I show you Plaintiff's Exhibit 113, which purports to be a copy of a memorandum from you to Mr. Crocker under date of June 9, and ask you if you prepared that and if you sent it to Mr. Crocker on or about that date?

A Yes.

MR. McCONNELL: I offer it in evidence.

MR. MALONEY: May I see it, Mr. McConnell. I don't seem to havea copy of that one.

THE COURT: While you are looking at that, we will take our morning recess.

(Recess.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

eoh 1 Clarke-direct

T4 (In open court without the presence of the jury.)

MR. MALONEY: I have another scheduling problem, your Honor. Apparently, Mr. McConnell has one additional witness and he doesn't want to divulge who it is. It creates a problem for me in knowing what papers to have down here this afternoon and how long he will take and so on.

I think it is also inconsistent with the progress we have been trying to make.

MR. McCONNELL: There is no secret. You have to have a little fun trying a lawsuit and I was teasing Mr. Maloney. He wanted to know who my mystery last witness would be. There is no last witness. I am perfectly willing to tell him that.

THE COURT: All right, so there isn't any.

MR. MALONEY: Mr. Clarke will be the windup?

MR. McCONNELL: I will recall Mr. Kovar to give his opinion.

THE COURT: Now you know. All right, bring in the jury.

(Jury present.)

BY MR. McCONNELL:

Q I believe when we broke off, Mr. Clarke, I had shown you Plaintiff's Exhibit 113. Did you identify that as your memorandum prepared on June 9th?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

THE COURT: You offered it, I think.

MR. McCONNELL: Yes.

MR. MALONEY: No objection, your Honor.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 113 received in evidence.)

Q That was sent to Mr. Crocker?

A Yes.

Q And a copy to Mr. Sinsheimer?

A Yes.

Q You state: "To bring you up to date on the ISL situation, it has fallen to my lot to dismiss Allan Kovar and I am endeavoring, at the present time, to set up a meeting with Kovar on Thursday next, June 11th.

"Assuming that at this meeting there are no hitches and everything goes as you and I had originally planned, then all that will remain for Allan Kovar to carry out so far as ISL is concerned, is to collect from the Sea Well facility any of his personal possessions."

You so state?

A Correct.

Q What were the "hitches" that you were referring to, possible hitches?

A I don't know. It was just a case if anything

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

happened and for some reason Allan Kovar may not leave the company. I can't think of anything else that I may have had in mind.

Q It was certainly --

THE COURT: It was another way of saying if everything goes according to Hoyle, is that right?

THE WITNESS: Yes.

Q But it was certainly contemplated at this time, June 9th, that Kovar was going to be dismissed?

A Yes, I believe that was the day that I was advised by Mr. Sinsheimer that that was the action he intended to take.

Q Continuing you state:

"The suggestion at the present time is for a separation payment of six months' salary with the provision that Kovar can continue to live in the Villa Encantada for six months.

"The next intermediate step is to arrange that Messrs. Gretton, Sweeney, Lewis and Parr arrive in Barbados over this weekend and preferably on Friday.

"Warren feels that Milton Albert should also be there for the first few days of our taking complete control, and Milton can then keep Kovar in order should it transpire that on his return to Barbados any problems develop."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

What were the problems that you were--

A I don't know.

Q -- contemplating?

A I don't think I contemplated any particular problem.

Q Was it contemplated that Parr and Sweeney were going to go to Barbados as part of the takeover team?

A Yes.

Q And when they got down there, they were to work out a pricing formula; is that right?

A I don't know specifically that they were to work out a pricing formula, but Parr would certainly be involved with Sweeney and the people in Barbados on pricing. I don't think that was the reason for Sweeney to be there.

Q Who was Sweeney?

A He was the controller for Towcester.

Q You state: "We will have to check with the group as they progress, and I assume that you will put Sweeney in charge so that he can keep both you and I advised of progress over the two-week period which we felt would be necessary for Gretton to be brought up to date by Hewitt. Also that time should enable Sweeney, Lewis and Parr to carry out their respective assignments and for Sweeney and Parr to be able to set up a pricing procedure to cover all future quotations and orders."

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

What was the pricing procedure?

A You see, Sweeney had already become very deeply involved in the Portuguese and the Malta operation and what we were attempting and hoping to achieve with Sweeney was to look into the whole financing, the financial structuring, in Barbados to see whether or not we could come up with a good sound basis for quoting competitive prices and still b2 make profits.

Q Wasn't the suggestion that you would set up a pricing formula for Barbados similar to the type of pricing formula that you had in your Malta and Lisbon operations?

A I was not conversant not even today with the pricing procedures in the Portuguese and Malta operation.

Q I show you what has been identified as Plaintiff's Exhibit 78 and ask if you can state what that is.

A This is a telex that I sent to Norman Crocker on June 11, 1970.

MR. McCONNELL: I offer it in evidence.

MR. MALONEY: No objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 78 received in evidence.)

MR. McCONNELL: I ask to read it to the jury, your Honor.

THE COURT: All right.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

(Mr. McConnell read from Plaintiff's Exhibit 78 to the jury.)

Q Did Sweeney and Gretton and Lewis and Parr in fact all go to Barbados on or about, say, June 12th?

A I believe Dave Gretton went a little later, about June 15th. I think the others went June 12th.

Q It was also contemplated that after this takeover team had been down there for a period of time that you and Crocker would come down to review their findings, isn't that right?

A Yes.

Q And did you and Mr. Crocker go to Barbados later in June?

A Yes.

Q Can you fix the date?

A About June 22nd.

Q I show you Plaintiffs Exhibit 40 and ask you if you can state what that is.

A It is a report issued by Mr. Sweeney, dated the 6th of July, 1970, on the visit to International Scientific (1970) Limited, Barbados, June, 1970.

MR. McCONNELL: I offer Plaintiff's Exhibit 40 in evidence, your Honor.

MR. MALONEY: No objection, your Honor.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 40 received in evidence.)

Q Referring to page 6 of that report, which is headed "Price buildup procedure", does that refresh your recollection that Mr. Parr and Mr. Sweeney did, in fact, work up a pricing formula when they were down there?

A Apparently so from this page.

MR. MALONEY: That is page 6?

THE WITNESS: Page 6.

You must also realize that all the other information was extracted by Sweeney, too. It wasn't just specifically price buildup. It was budget and order book situations. This was only one item of many that he was responsible for.

MR. McCONNELL: I understand.

Q Now, Mr. Sweeney states:

"Almost every estimate showed that the weaving time allowed was some 50 per cent of that contained in similar estimates for Lisbon."

Do you recall Mr. Sweeney reporting that to you when you came down later in June?

A I can't say I recall it, no.

Q Do you recall Mr. Sweeney ever saying to you that he couldn't believe the standard times or standard hours or the estimated times of ISL?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: I don't know as the jury and I understand what all that means.

THE WITNESS: I don't either.

THE COURT: What do you understand it to mean, what is weaving time as used here?

THE WITNESS: This is the weaving of the cores, the wires being laced through the cores.

THE COURT: And how long it takes an employee to weave a core, is that what that means?

THE WITNESS: Probably.

THE COURT: I am asking.

THE WITNESS: Yes. I am not an engineering expert on weaving of cores.

Q Did you later learn, Mr. Clarke, that, in fact, it took the workers at Barbados less time to weave a plane than it took the workers at either your Lisbon or Malta plants?

A I don't know that I specifically learned that. I know that our efficiencies seemed to be far less in Barbados than in the Portuguese or Maltese plant.

Q Are you sure of that?

A To the best of my memory I believe that is what was reported.

Q Did you ever see Mr. Cuthbertson's report of that?

A Cuthbertson?

Q Yes, do you know who he was?

A I never met Mr. Cuthbertson, but I believe he worked for Mr. Dalziel in England in cost accounting. I am not too sure.

Q Didn't he come down to check out the standard time?

A He was sent from England to Barbados.

Q Did you ever see his report?

A I may have, but I don't know. It wasn't carried out specifically for me. It was carried out on behalf of Plessey England. It was very late in the year.

MR. MALONEY: Your Honor, excuse me. Perhaps we ought to Mr. Cuthbertson's report for identification since it has been referred to.

THE COURT: Has anybody got it?

THE WITNESS. From memory, I don't think Mr. Cuthbertson was there until towards the end of November.

MR. McCONNELL:The witness has said he doesnt recall seeing it and doesn't recall it.

THE COURT: All he wants is if you have a copy of it, he wants you to mark it for identification.

MR. McCONNELL: I don't have it in front of me.

THE COURT: Well, if you have it. Have you pre-marked it?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. McCONNELL: No.

THE COURT: If you have a copy of it, mark it; not now, but do it later.

MR. McCONNELL: I have it among a stack of other documents. I just wanted to know whether or not he was familiar with it.

THE COURT: All the jury and I want is that this report be marked.

THE WITNESS: I can't recall the report.

Q Do you recall when you and Clarke came down later in June having some discussion about the product range for the ISL facility?

THE COURT: What does that mean? What do you understand "product range" to mean?

THE WITNESS: The types of memory stacks.

THE COURT: The range of products to be manufactured in Barbados?

THE WITNESS: Yes.

THE COURT: All right.

Q Did you have any discussions with Mr. Crocker about discontinuing certain of the type of work that ISL was doing in Barbados?

A The wiring frames. That was much earlier than this visit, though. This goes back to when we visited after the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

spring joint computer conference when Peter Hewitt was complaining about the wiring of the looms. That business that in his opinion was very labor intensive. There were a number of different types of looms that had to be wired and they were short runs. They were not long production runs and in his opinion he couldn't see how it could possibly be profitable and we were having an awful lot of rejects at that time, too, on that equipment.

Q When you say wiring of looms, are you referring to cable harness assembly?

A Yes, the same thing.

Q Whether or not you had discussed this subject earlier, did you discuss it with Mr. Crocker when you came down later in June?

A Probably.

Q Was it agreed at that time that you would discontinue the cable harness work then being done by ISL?

A We didn't wish to take any new orders. We would

b3 honor the orders that we already had in the house.

Q A decision was made, was it not, to advise the sales representatives and Tucker that they were not to take any further orders for cable harness work?

A I believe so. I can't remember the dates, but they would be advised around that time.

eoh12 Clarke-direct

Q And they were also told not to take any orders for electronic subassembly work?

A I don't know what this electronic subassembly work was. I can remember the cable harness and also the memory stacks, but the electronic subassembly I can't.

Q Let's get at it this way. Did you and Crocker reach a decision to advise the sales reps that the only business that they were to take was core planes and core stacks?

A Yes.

Q Now, when you made that decision, did you have before you the contract with ISL?

A No.

Q Was there any discussion between you and Crocker as to whether or not you could do that, that is, discontinue cable harness work under the contract?

A We would not have discontinued anything unless we cleared it. We were not involved in the legal aspects of that business, but I am sure it would have been discussed with either Mr. Sinsheimer or Mr. Jewett before we decided to discontinue anything. We would not have arbitrarily decided that.

THE COURT: You were only interested in whether or not you thought the plant could operate profitably in a particular line?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Exactly. We were trying to realign this plant floor to make it a more productive unit and quite a large area was taken up with these frames and the Peter Hewitt floor plan could not be put in while the cable forms were still in that location. Also the fact that Peter Hewitt felt that this was not a profitable side of the business and we wished to organize a very efficient and a very profitable memory stack operation.

Q The Peter Hewitt floor plan called for a layout, if not identical, very similar to what you had at Lisbon, is that right?

A Portugal. This was his facility and he knew he could operate very well under those circumstances.

Q It also called for having independent tables or work stations, isn't that right?

A Yes, very different from the ones that ISL had.

Q ISL had benches?

A Yes, a very sloppy arrangement. The girls sat opposite one another and they spoke with one another and it was not productive. They chatted during the daytime instead of operating as a manufacturing unit.

Q When you said no decision was made to discontinue, what you meant to say was that as to those orders in the shop you were going to complete them?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Orders in house we would complete.

Q But your instructions to your sales reps were that they were not to take any more of this kind of business, is that it?

A Correct. The only thing I am unsure about are the dates as to that instruction.

Q I think it has been stipulated that it was some time in July, okay.

So, when you made that decision, did you have in mind this provision of the contract, namely, under paragraph--

THE COURT: He didn't. Let's not get into that. He said he left that up to the lawyers. He didn't know anything about the contract.

Q Now, did Hewitt say that the cable harness business was unprofitable or did he say that core plane and stack business was potentially more profitable because of the hither profit margins on those items?

A I understood that the frames, the cable harness were not profitable.

Q Did you ever see any financial data showing that?

A I didn't personally.

Q You do know that it is a much simpler operation to make cable harness than it is to string these planes and stacks?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Indeed. There was one other point that perhaps should be brought out here, too. That one of the first meetings thatwe had with the Industrial Development Corporation, and that was going back to the February meetings, it was quite clearly spelled out to us by the government in Barbados that they had no desire for a company besides Plessey to take over this operation and merely exploit low cost labor and really this all that cable harness is. You are selling labor. You are not selling any great expertise or skill. This becomes extremely cutthroat in quoting for orders when you are only selling the low cost labor content.

Q You think that was exploitation?

A I know that the government viewed it as exploitation.

Q Did anybody at the time you made this decision not to take any more cable harness business consider the possibility that the plant might be less than full capacity on core plane and core stack work?

A No, that was not anticipated.

Q Following the takeover, do you recall that there was a period of about six weeks when Plessey could not ship any raw materials to the Barbados facility because your new customs broker, Barnett Freeslate, did not have the necessary licenses?

A There were delays. I wouldn't say they were for

eoh 16 Clarke-direct

six weeks. I am not too sure how many weeks, but I would think it would be more like three or four weeks.

THE COURT: But you do remember there were delays because of licensing?

THE WITNESS: There were delays; yes, sir. When we first took over Barnett Freeslate took over from the previous freight brokers and it was understood that the licenses could be freely transferred, but we found when it came to a transfer that some of the licenses had already lapsed. Others there were problems with the customs and I believe some of them were transferred, but very few. We then had to make applications for new licenses, which took a little time in being processed.

Q Again on the cable harness, at the time you reached this decision, did either you or Crocker talk to Mr. Tucker or Mr. Huntoon or any of these sales reps as to the business potential for this type of business?

A The business potential for the harness?

Q Yes.

A Mr. Parr may have spoken with them. I don't recall speaking with them. I don't know whether Mr. Crocker spoke with them.

Q When was the transfer from the two customs brokers, from Freight Brokers International to Barnett Freelsate?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Some time in June.

Q Did this problem with the licenses occur about that time?

A Yes.

Q I show you what has been marked Plaintiff's Exhibit 33 and ask you if you can identify that.

A Yes, it is a report issued by Dave Gretton, dated August 5th.

THE COURT: How can you tell it is Mr. Gretton's report?

THE WITNESS: I saw the last page there.

THE COURT: The squibbling there, you know that to be Gretton?

THE WITNESS: Yes, sir.

MR. McCONNELL: I offer 33 in evidence, your Honor.

MR. MALONEY: No objection.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 33 received in evidence.)

Q Mr. Gretton reports to you:

"The production of cable forms was beginning to progress smoothly until the shipments of raw materials ceased."

Then, skipping down --

THE COURT: What page are you reading from?

MR. McCONNELL: Page 2, your Honor.

THE COURT: All right.

MR. MALONEY: Could I have that portion that Mr. McConnell read again because I hadn't found it by the time he read it?

b4

THE COURT: It is in the middle of page 2. Do you want to read it again.

Q "The production of cable forms was beginning to progress smoothly until the shipments of raw materials ceased."

Then, skipping down:

"IBM. All IBM production stopped because materials were held up in New York. As a result of the holdup of materials (no shipment into Barbados for four weeks) we have had to move labor around as we ran out of materials on various projects. This movement of labor has resulted in labor inefficiencies."

Does that refresh your recollection that the whole of July, the month of July you were shut down of raw materials?

THE COURT: I don't know what you mean by "shut down of raw materials". Are you saying the plant was shut down?

MR. McCONNELL: No, I didn't mean to suggest that.

THE COURT: That is right, I didn't think you did.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

This indicates they were having difficulty getting raw materials during July.

Q Does that refresh your recollection that the new customs broker was without licenses for the month of July and that, therefore --

THE COURT: Whoa, whoa.

MR. MALONEY: I object, your Honor.

THE COURT: I think you are running a lot of conclusions there. I think you can ask the witness if he has any recollection as to the reason why shipments of raw materials had ceased.

Do you remember why?

MR. MALONEY: Your Honor, we will stipulate that they cased because the licenses fell through and I believe Mr. Clarke has checked all the documentation and has attempted to fix the date at each end.

THE COURT: Let him answer the question.

Q Do you recall --

THE COURT: Let him answer the question.

A On the cables, we speak here of production of cables. A number of the items for the cable construction were actually supplied by our customer and it doesn't necessarily follow that this was because of licensing that there were delays.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

The same with IBM. IBM supplied the cores. That was again customer furnished material and I see there is a notation "IBM were late" that I put on the bottom of that report when I received it so that is not the case of customs holding up anything. It is just that the customer itself was late in supplying customer furnished materials.

I did have my shipping manager check for today shipments going into Barbados and up to July 6th I have here an actual report issued by Barbados of goods inwards, dated July 6th, so certainly up until that date they were receiving shipments into Barbados.

The first shipment that we made out under the new broker was July 30th, so this is why I said it seemed to me to be a period of about three weeks.

All prior to July 6th there were continuous shipments going into Scientific Trading Corporation from all of our vendors and what the holdup was with Scientific and Freight Brokers International in forwarding those goods on to Barbados I don't know. I am sure eventually they were all shipped down there because wepaid for them all, but why there was a delay at that particular time I don't know.

Q I show you what has been identified as Plaintiff's Exhibit 34 and ask you if you can identify that.

A This is the report of August 31, 1970, and it is

the four-week period ending August 28th. It is Gretton's report on the month of August.

MR. McCONNELL: I offer Plaintiff's Exhibit 34.

MR. MALONEY: No objection, your Honor.

THE COURT: It will be received.

xx (Plaintiff's Exhibit 34 received in evidence.)

Q Mr. Gretton states and I am reading from page 2: "Material to enable us to complete cable forms manufactured during the latter part of July and the beginning of August finally arrived in the plant on August 24th" and then under "General forecast, output August. Production fell well below original forecast because of acute shortage of materials."

Now, does that refresh your recollection that you didn't actually get the licenses until some time mid-August?

A No, it doesn't because I know we shipped 64 cartons on July 30th so we obviously had to have a license at that time. 64 cartons was the largest shipment we ever made while I was responsible, the largest single shipment.

Q Do you recall that you continued to experience a shortage of raw materials at the Barbados plant for the months of September, October, November, December and even into January, 1971?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, there were shortages. Could I just enlarge on that? I think that perhaps it would be helpful for everyone.

Q All right.

A The reason for shortages is that we had instituted in Barbados when we took over, and Peter Hewitt started this, a very strict inventory control. There had been very little, if any, inventory control. In fact, after the June takeover when we got involved in checking inventory, we found that there was a great deal of inventory on the records as having been there but just didn't exist. It was not in the bons where it was purported to be.

We found that by instituting a card system for each individual item we could have a minimum and maximum quantity, the idea being that when the operator withdrew from stores down to the minimum quantity, they should then reorder.

Unfortunately, on a number of instances they withdrew down below the minimum quantity but never actioned the reorder proceed. Consequently, Pat Tito, who was the purchasing agent, would receive a telex order asking for equipment immediately when probably the supplier of that equipment would have a 10 or 12 weeks lead time and this meant that we were forever in arrears. The system did not function because of the people themselves operating the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

system who were not too reliable.

Q One of those people was your man Tito who you hired?

A Tito could only process the order when he received notification from Barbados to place an order.

Q What happened to Tito?

A When we moved up to Boston, at this time Tito left.

Q He was terminated, wasn't he?

A He left. He didn't wish to relocate.

Q Did you offer him a job?

THE COURT: Let's not get into that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Well, now, one of the materials that you experienced a shortage of was printed circuit board type 48-000-86, is that not the fact?

A I know there were shortages of printed circuit boards; I am not too conversant with the part.

Q That was not a customer-furnished item?

A It might not be.

Q And that was used on the Hewlett-Packard job? Is that right?

A I wouldn't know.

THE COURT: He doesn't know.

Q I show you what has been marked as Plaintiff's Exhibits 35 through -- what is the last number that you have there --

THE WITNESS: 39.

Q I ask you if you can identify those for the record?

A Yes, these are monthly reports issued by Dave Gretton.

Q And for what months?

A September, October, November, December, 1970, and January, 1971.

MR. McCONNELL: I offer 35 through 39 in evidence.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mp2 Clarke-direct

MR. MALONEY: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibits 35 through 39, inclusive, received in evidence.)

Q Referring to page 2 of Plaintiff's Exhibit 35, Mr. Gretton reports, does he not, "The main reason we did not meet the forecast figure was the delay in receiving 28AWG gauge wire. This wire did not arrive in the factory until September 21 though it had been promised on or around August 16. 98 per cent of our stacks use this particular wire."

Now, was that a customer-furnished material or was that supplied by ISL?

A I couldn't really tell you, but if it was 98 per cent, it was purchased, I would think.

Q Whose responsibility was it to see that that wire got there on time. Was that Tito's?

A Pat Tito was the purchasing agent. He would have to be given sufficient notice to order it for the manufacturing lead time to produce it.

Q Going over to page 4 of the report, under "Personnel," Mr. Gretton reports:

"Two expatriate members of our staff have been given notice during the month:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

"Mr. D. Michalski and Mr. C. Launius.

They will leave the company on November 30, 1970."

Now, those were the two gentlemen that were in charge of this Honeywell cable assembly work? Is that not the fact?

A Yes. The reason for that was that Honeywell cancelled out the majority of the cable orders. I think that was because the market was going soft. I think that was the impression I had. They just didn't require more.

Q They did that after you had advised Honeywell that you were discontinuing that type work at Barbados?

A It would have been after that date.

Q You advised Honeywell that there would be a $10,000 cancellation charge?

A Mr. Parr was in touch with them, because we had already purchased ahead of deliveries sufficient material to fulfill all of their orders, and when they cancelled the order out we said there would be a cancellation charge for the outlay of the money that we had made for the items to produce their order.

Q And that was $10,000?

A It might have been. I can't recall from memory.

Q Going to Plaintiff's Exhibit 36, which is Mr. Gretton's report for the month of October, the second page,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Mr. Gretton reports:

"Utter confusion reigned for several days when Honeywell first cancelled and then on receipt of our cancellation charges decided it was cheaper to have the cable forms built."

Do you recall that that was the case, that after you gave Honeywell notice that you were going to charge them this cancellation charge, they said, "Well, go ahead and build the cable forms."?

A I remember Mr. Parr had a number of conversations and visits with Honeywell about this. Honeywell had just been taken over by General Electric, and there was a complete change in philosophy at Honeywell. They did decide to allow us to continue manufacture of them.

Q Continuing: "October output - the shortage of printed circuit boards type 48-000-86 was responsible for the $20,000 short fall in output. This particular board is used on three projects and we must have 100 to 200 boards per week in order to maintain production. For the past four months we have been promised delivery at this rate but the manufacturer has never achieved it. A delivery schedule has now been received showing delivery of 100 pieces per week to Boston commencing

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the first week in November. If the promises are met we should see the stacking area achieve full production at the beginning of December. Hewlett-Packard has been the customer affected by the shortage of these boards. We lost a minimum of 13 stacks."

Did Mr. Gretton so report?

A Yes.

Q Going to Plaintiff's Exhibit 37, which is Mr. Gretton's report for the month of November, on page 2, under "General Comments" he states:

"November output - the forecast was not achieved due to the lack of P.C. boards and the late arrival of certain customer-furnished components."

Would those be the same P.C. boards 48-000-06?

A I couldn't tell from that.

Q When did you start the re-layout of the production floor in Barbados? Do you recall?

A Not too accurately. I would think it was probably around July or August.

Q And that was still going on in November, was it not?

A It was not completed until the December close-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

down, the December holiday. We usually try to do this over weekends when it won't affect the operation from an output viewpoint.

Q Well, regardless of when it was done, you were in the process of taking out benches and putting in these individual work stations over a period of several months? Is that not the fact?

A I believe so. I am not too sure on the date. It did take a period of time.

Q Now, do you think that might have had some effect on productivity during the period of changeover?

MR. MALONEY: I object to the form of the question. He can ask him whether he knows whether it had some effect.

THE COURT: I think I will let him answer the question.

Do you think that affected production?

THE WITNESS: I think it is unlikely, sir.

THE COURT: Your reasons for that is because you did it on weekends and during the Christmas holidays?

THE WITNESS: Yes.

Q Referring to Mr. Gretton's report for December, Plaintiff's Exhibit 38, he states, does he not:

"Materials - once again in December we have

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

problems in shipping materials in from New York. Airlines would only carry foodstuff and perishables because of the Xmas rush and it resulted in only one shipment of materials in three weeks."

He so reports?

A Yes. This was a problem in the holiday season in Barbados. There was so few suppliers in connection with the visits of holiday-makers who wanted to visit the island. The government ordered priority on foodstuffs and perishables.

THE COURT: You don't begrudge the tourists being fed in Barbados? We go down to Barbados, and the jury and I would like to be fed.

THE WITNESS: No, but this is exactly what happened.

Q This is a problem that could have been anticipated? Isn't that so?

A I think that is difficult --

THE COURT: I don't see that question. The Barbados Government decided that they were going only to take in foodstuffs?

THE WITNESS: That is right.

Q Now, would you refer to your January report, Plaintiff's 39, the letter of Mr. Gretton's. These

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

reports went both to you and Mr. Crocker, did they not?

A Yes.

Q He states:

"The settling-in period for the new production layout, new cost control procedure, and new material control procedure took just that much longer than we had anticipated. Every effort was made to pick-up on the first week's production but this proved impossible. 20 Magnavox planes were strung and shipped to Boston, the cost for these is notincluded in the output figures."

Would that indicate that the production re-layout or the substitution of these individual work stations, the benches, was completed some time in January?

A Yes, that would so indicate.

Q But all this that had been done, you still didn't have the lighting fixtures? Is that right?

A Correct.

Q He states: "With the exception of the light fittings we were able to complete the production floor re-layout as planned. On resumption of work we had 300 work stations in position with adequate illumination. Since that date a further 150 work stations have been set out. We are now

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

proceeding with alterations and improvements to the core loading area, clean room area and sub-assembly area.

"I am at a complete loss to explain the delay in obtaining sample light fittings. Despite promises from Boston dating back to October, 1970, I have only received sample sockets, starter and tube."

Do you know when, if ever, you got the light fittings?

A Yes, I believe they eventually arrived. This 50 cycle was not a standard light fitting and Tito had placed an order with one supplier, and after weeks the supplier suddenly decided either he didn't make them or they just didn't want to make them, because it was such an odd-ball item. We eventually were able to purchase them.

Q I hand you Plaintiff's Exhibits 46 and 47. Plaintiff's Exhibit 46 purports to be a copy of a letter from Mr. Gretton to Mr. Tito under date of September 29, 1970. Does that show a copy going to you?

A Yes, sir.

MR. McCONNELL: I offer 46 in evidence.

MR. MALONEY: No objection.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

xx (Plaintiff's Exhibit 46 received in evidence.)

Q Mr. Gretton says: "The supply of materials to Barbados appears to have deteriorated once again and I now find myself in the same sort of situation that I was in during July of this year. I have three product lines down (my output for the second week in October will be almost zero) and at the moment I have no idea when I can expect my next shipment from New York."

What if anything did you, Mr. Clarke, do, to alleviate that situation?

A At that time the Plessey memory products had moved up to Maynard, Massachusetts, and I spoke to Mr. Parr. Mr. Parr was then located in Maynard. And I asked him what he was doing about clearing them. And he indicated to me that shipments were going down to Barbados on a bi-weekly basis. And subsequently I have details here of actual shipment dates, so there were some shipments going in, but it was obvious from the report all the items were not included in those shipments.

Q Well, will you refer to Plaintiff's Exhibit 47, which purports to be a letter from Mr. Gretton to you under date of November 20, 1970. Did you receive the original of that on or about the date it bears?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I would imagine so.

MR. McCONNELL: I offer Plaintiff's Exhibit 47 in evidence.

MR. MALONEY: No objection.

(Plaintiff's Exhibit 47 received in evidence.)

Q Now, Mr. Gretton reports for Hewlett-Packard:

"Each stack uses 8 P.C. boards type 48-000-86 and we have 54 stacks on order in arrears. Hewlett-Packard have stated they will not accept any further stacks after December 23. As of today's date I have sufficient material to build 27 stacks. I have promised delivery of 24 planes by November 30. I will therefore be able to manufacture only 30 stacks by December 23."

And then skipping down to the bottom on the second page:

"As can be seen, shortage of P.C. boards is our main problem. Boston have been under pressure to expedite the supply of these boards but unfortunately they have not had too much success. The biggest single item that is at fault is the supply of the 48-000-86 boards. We have the proven capability of producing 15 Hewlett-Packard stacks per week

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

and we could have easily cleared the arrears on this project. As it now stands we expect to lose in excess of $25,000 U.S. due to lack of boards."

He so reports to you in his letter of November 20?

A Yes.

Q What, if anything, did you as head man do to alleviate this situation?

A There was a carbon, as you see, to Mr. Parr.

Q You passed it on to Mr. Parr?

A There is no notation on this. I can't recall exactly what I did, but I would telephone Mr. Parr to find out what was the reason for the delay. I know there was difficulty in producing this, this particular circuit board, and I can't recognize all these numbers. But there was one board designed by ISL which all manufacturers who were approached had difficulty in producing, and I believe this was the board, and it was always a problem in getting it manufactured in quantity, the boards that we could use, because it was a most difficult board for a printed circuit board manufacturer to produce.

Q What happened to Parr?

A Mr. Parr was still with the operation when it went away from our control. I believe he left the company

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

some time later, but I don't really know. I have not seen Frank or spoken with him since.

Q Wasn't Parr fired in February?

A He may have been.

Q Wasn't management responsible for the ISL Boston-Barbados operation being taken away from you and given to Crocker some time in January of 1971?

A It was effective February 1st.

Q As a result of meetings that you held in January at Barbados?

A I didn't go to Barbados in January. Norman Crocker went to Barbados alone in January. I never saw the report, not to my knowledge, of his visit.

Q Going back to the conversation that you had in May with Mr. Crocker that I asked you about earlier -- I think the date was May 8, May 9, May 10 -- in those conversations did you also ask or tell Kovar that you wanted Mr. Kepple, ISL's chief engineer, to report to Plessey's Mr. McNamara?

A I can't recall that, but it may have been so, because McNamara was an engineer, and it would not have been an unreasonable request, but I don't recall the actual conversation.

Q To your knowledge, did Mr. McNamara have any

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

core memory experience?

A He was hired by the Plessey Company for this knowledge of all memories, even as far as plated wire, which is much more sophisticated than core memory, but one would have to know core memories.

Q Wasn't he a plated wire engineer?

A I don't know.

Q What happened to Mr. McNamara?

A He left the company.

Q He was terminated?

A I think he left.

Q Do you know when?

A No. It would be about the middle of the year. I am not so sure of it. I am not too sure of the date.

Q I believe you mentioned that Mr. Parr moved from Farmingdale down to Boston. Do you recall approximately when the Boston facility was established?

A Yes, it was about the middle of September, September 15 thereabouts.

Q Do you recall how much Plessey was budgeting for the cost of that operation on an annual basis?

A No.

Q Does the figure of $350,000 refresh your recollection?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A No, it does not. I can't recall the figure. It would be in the record.

Q Well, when you established the Boston facility you not only set marketing up there, but you also set up a prototype?

A We started to recruit engineering people. By the end of January I think we were up to about 22 people. That included typists and office personnel.

Q Do you recall that you asked Mr. Kepple, ISL's chief engineer, to come to Boston to head up the engineering in Boston?

A I don't know whether he was invited to head up the engineering. Kepple was offered a job in Boston.

Q And Kepple left? Is that right?

A Yes, he left.

Q Then you brought Boyce up from Barbados? Isn't that right? Mike Boyce?

A It might have been. I can't recall that.

Q Who did that leave with any engineering experience in Barbados?

THE COURT: I don't like the question. Do you mean who was left in the engineering department?

MR. McCONNELL: Yes.

THE COURT: At what time?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: After Kepple came to Boston in September and when he quit Boyce came up later in September or October.

Q Do you recall that happening?

A I don't recall Boyce actually moving up, the date, that I don't recall.

THE COURT: The question is after these fellows left who were the engineers down in Barbados?

Q Who was left in the engineering department?

A Dave Gretton would be better able to answer that question.

Q You don't know?

A I don't know.

Q Have you continued at the Boston facility?

A No.

Q In fact, that was shut down immediately after the measuring year?

A I don't know the actual date when it was closed down, but it was closed down some time in '71.

Q And everybody connected with the Boston operation was given their termination notice?

A Well, they may have, but that was entirely outside my jurisdiction then, Mr. McConnell. From February 1st I had nothing whatsoever to do with that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

operation.

Q It was under Crocker's jurisdiction then?

A Correct.

Q Is that right? February 1 on?

A Yes.

Q Well, do you recall Mr. Gretton complaining from time to time about a breakdown in communication between Barbados and Boston?

A I can't recall that.

THE COURT: Will you speak up?

THE WITNESS: I can't recall a breakdown.

Q Do you recall Mr. Gretton complaining that all the engineering people were up in Boston and they had all the information and he was left with no information down in Barbados and he couldn't get any communication from Boston? Do you recall anything like that?

A No, I don't. I would be surprised, because he could pick up the telephone. It is not that far removed.

MR. McCONNELL: Would this be a good place to break and permit me to get these papers organized?

THE COURT: If you will be able to move along faster this afternoon, yes.

Ladies and gentlemen, I told you I have to break a little earlier this afternoon. Would it be agreeable

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to come back and start at 10 minutes to 2? Thank you very much.

(Jury excused.)

MR. MALONEY: Do you intend to hear any argument on the motion for a directed verdict?

THE COURT: I will let you know when the plaintiff rests. He has not rested yet. I don't want to spend a lot of time on it. It doesn't mean I won't hear any argument, but I don't want to hear much argument on it. It's quite clear to me that I want you to go ahead with your case.

(Luncheon recess.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

AFTERNOON SESSION

1:50 P.M.

D O N A L D C L A R K E, resumed.

THE COURT: Good afternoon, ladies and gentlemen.

You may proceed, Mr. McConnell.

MR. McCONNELL: All right, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. McCONNELL:

Q I show you what has been marked Plaintiff's Exhibit 95 and ask you if you can identify that document.

A Yes, I can.

Q What is it, sir?

A It is a report from myself to Mr. Sinsheimer, Mr. Parr and Mr. Albert on a visit to International Scientific (1970) Limited, Barbados, September 2nd through September 5th.

Q Turning to the third page under the heading "Sales representation", you state--

MR. McCONNELL: Excuse me, I offer Plaintiff's Exhibit 95 in evidence.

MR. MALONEY: No objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 95 received in evidence.)

Q You state: "Tucker, the sales manager for the ISL sales rep team" --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. MALONEY: May I have the page, Mr. McConnell?

MR. McCONNELL: Page 3.

Q "Tucker, the sales manager for the ISL sales rep team is still producing inquiries outside our terms of reference, e.g., core winding, harness wiring and both he and his rep organization seem incapable of fully comprehending the ISL ability. Do we have to stay with this representative organization for the measuring year?"

THE COURT: Representation.

Q "Do we have to stay with this representation organization for the measuring year? (WJS would you review and advise)."

What were you referring to there, Mr. Clarke?

A As the report indicates, they were producing inquiries for core winding and harness wiring.

Q This is that cable harness work, right?

A Right.

Q They were still getting customer inquiries?

A I don't know whether they were customer inquiries, firm ones, or it was just hearsay from the sales reps that they could get the business. I don't recall seing the actual inquiries.

Q Did you ask Mr. Sinsheimer whether or not you could terminate the sales reps before the end of the measuring

year?

A Only in this report.

Q Did he respond to that?

A He said we could not, we would have to continue.

Q But you terminated them as soon as the measuring year was over, right?

A I didn't have anything to do with the termination. I was not in charge of the measuring year.

Q But they were terminated?

A They may have been.

MR. MALONEY: We will stipulate that they were terminated after the end of the measuring year.

THE COURT: All right.

MR. McCONNELL: I offer Plaintiff's Exhibit 44 in evidence. For the record, it purports to be a budget for the Boston activity for the year 1970-71.

THE COURT: Has the witness ever seen this before?

THE WITNESS: I may have, your Honor. I don't recognize it. Could Mr. McConnell advise me where this came from?

MR. McCONNELL: It came from Plessey's files.

THE WITNESS: Plessey England or Plessey North America?

MR. McCONNELL: I wouldn't know.

THE WITNESS: I see.

MR. MALONEY: We will stipulate that someone in the Plessey organization prepared the budget for the Boston facility. We have no objection to the introduction of the document in evidence as long as there is an accompanying instruction that this is no evidence of the amount of money that was actually spent at the facility during the measuring year.

THE COURT: It is purely a budget.

MR. McCONNELL: That is right.

MR. MALONEY: Purely a budget that someone had prepared.

THE COURT: All right, I will receive it. I take it there is no objection to that. I don't know what more Mr. McConnellwants to do with it.

Mr. Clarke, you don't recall ever having seen this before?

THE WITNESS: I don't, I may have done so, but I don't recall.

xx (Plaintiff's Exhibit 44 received in evidence.)

Q Does that refresh your recollection, Mr. Clarke, that the amounted budgeted for the Boston facility was $374,000?

A This budget indicates it. It says for the year '70-

'71, which would be a Plessey fiscal year commencing July 1st, 1970, through to June 30, 1971. This may have been prepared after-- I don't know. I just can't recall having seen it before.

Q Would the amount, whatever it was, budgeted for the Boston facility be included as part of the administrative and overhead burden used --

THE COURT: Whoa, wait a minute. I thought we had pretty well established -- Mr. Clarke, are you an accounting man?

THE WITNESS: No, sir.

THE COURT: I didn't think so. He has given me the impression he is a businessman but not an accounting man. Is that right?

THE WITNESS: Correct, sir.

Q Let me ask you this: do you know of your knowledge whether the budgeted or anticipated expenses for the Boston facility were used or included in the price buildup formula for ISL?

A It would be normal business practice to include some cost for a Boston operation, but whether or not all of this $374,000, tha I would not know.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

T2

Q I show you what has been marked Plaintiff's Exhibit 41 and ask you if you can identify that?

A Yes.

MR. McCONNELL: I offer 41 in evidence, your Honor.

MR. MALONEY: We have no objection, your Honor.

xx

(Plaintiff's Exhibit 51 received in evidence.)

Q Do you recall that as late as July 27 Mr. Gretton and his people were still not squared away on the pricing formula that Parr and Sweeney had worked up back in June at the time of the takeover?

A I don't know what you mean "not squared away on the pricing formula."

Q Let me use your term --

THE COURT: Before we get to that, I think the jury might be interested in this Exhibit 41, which has been received in evidence. That seems to be a memorandum from you to Mr. Crocker dated July 27, 1970.

THE WITNESS: Yes, sir.

THE COURT: Now, starting with that, what is your question?

Q Well, do you recall that Mr. Gretton and his people were still as of that date befogged with reference

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to the price build-up formula?

A My understanding of the prices they were continually quoting, they were trying also to come up with a pricing formula that accurately reflected the efficiencies of the Barbados operation, and it was very difficult for us to actually achieve correct figures on the efficiency of that unit. We were quoting prices without having too much knowledge of the accuracy of those prices. We were attempting to come up with a basic formula to correctly assess the cost of running the Barbados operation, the intent being that we quote prices that would not only affect all of our operating expenses, materials, labor, direct and indirect, but also produce a profit at the finalization of whatever orders we were able to take.

Q You were quoting prices on the basis of arbitrarily doubling Barbados estimated times for doing this work? Isn't that right?

A I don't know about that.

Q Well, would you look at Mr. Sweeney's memorandum, which is an attachment to Plaintiff's Exhibit 41, dated July 22, 1970.

Do you see that?

A Yes, I have that.

Q And he states:

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

"Overhead rate per produced hour. If we continue with the assumption that the hours in the estimate contain 50 per cent of those actually required we have a situation where the budget contains 800,000 hours and we estimate 400,000 hours."

Now, does that refresh your recollection that Sweeney had decided to double the estimated times for doing this core weaving work done in Barbados?

A This was a memorandum from Sweeney to Hourihan with copies to Albert, Parr and Gretton. I would have to have a little more information.

THE COURT: That does not refresh your recollection?

THE WITNESS: No.

Q Going back to your memo, you say:

"I have today received your letter of 22 July together with a memorandum from Bill Sweeney dated July 24 with regard to pricing formula and with Bill's memorandum he encloses an original and copies of a memo to Hourihan. We have reviewed their details with Milton Albert and it appears to us from the price build-up sheets which we have received over the past week from Barbados that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Gretton and his people are somewhat befogged."

Now, what do you mean by that?

A Milton Albert was approaching this pricing from a different viewpoint than Sweeney, and it was felt that two people, like too many cooks, spoil the broth; there were too many people trying to present their own formulas, and that the people down in Barbados would become somewhat confused until a resolution could be arrived at and they were told exactly what they had to do. The idea was not to let them sort out different people's suggestions, but to be told the best way to handle the pricing.

Q And you go on to say:

"What we intend doing is compiling our own price build-up sheet that we know exactly how the selling prices are arrived at and the total margin of profit involved."

Now, do you recall when finally this price build-up formula was set upon?

A I believe they continually worked on this, and where you stopped reading it continues and says, "Milton Albert is drafting one of these sheets and Frank will be sending the details down to Hourihan and at that time we will send the original of Bill's memo of July 22."

This was a continual operation. As we know

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

more about what was going on in Barbados we adjusted the costing to the situation as we found it.

Q Standard times or hours are simply the estimated time it will take to do a particular job?

A Yes.

Q And then that is used as a basis for your costing? Right?

A Yes, it is a standard. You can do better or worse than standard.

Q I show you what has been marked Plaintiff's Exhibit 42, which purports to be a memorandum from J. Allsop to F. Parr under date of September 24, 1970, with a copy to you.

MR. McCONNELL: I offer Plaintiff's Exhibit 42.

MR. MALONEY: No objection.

xx (Plaintiff's Exhibit 42 received in evidence.)

Q (Continuing) And the subject is "Selling price build-ups."

Now, who is Mr. Allsop?

A John Allsop was a specialist in cost accounting. He was transferred on a temporary basis, on loan, to Barbados from Towcester. He only arrived there about the middle of September, so he had been there a few days when

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

he wrote this memorandum of September 24.

Q Well, he states:

"Please find attached samples of my revised Selling Price Build-ups Forms which, with your approval, I propose to use as a standard format for dealing with customer inquiries."

Was this part of the continous revision of this pricing formula?

A Yes. Allsop was a specialist in this and that was the reason why Crocker had him transferred from Towcester.

Q Well, was he another cook? Was he taking this over?

A No, he was there to assist; he was, as I said, a specialist. I don't profess to be a core specialist, and I would not pass any characterization on this memorandum.

Q Incidentally, Mr. Clarke, did Mr. Parr ever report to you that Tucker was complaining about the prices he was getting from Parr not being competitive?

A I can't recall that, but he may have been, because there was price erosion at this time. If you are now speaking of September, the period of this memorandum, then whether we wish to term it a recession or not, it certainly was affecting the computer business in the United

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

States in 1970.

Q Did you participate in setting prices?

A No. That was Milton Albert's function, as far as North America and Plessey was concerned. He was the captain.

Q And the actual giving of the quotations was Parr?

A Parr would pass the information on to Tucker.

Q I show you Plaintiff's Exhibit 48, which is the letter under date of August 18, 1970, from Mr. Gretton to Mr. Parr.

MR. McCONNELL: I offer 48 in evidence.

MR. MALONEY: May we just have a moment. We have no objection, your Honor.

x x (Plaintiff's Exhibit 48 received in evidence.)

Q Reading from the document, and I am going to ask you a question:

"We have now taken a realistic look at the Magnavox project and produced a critical path analysis diagram for the project.

"As can be seen the original forecast, made in June, giving the completion date as October was completely wrong. The main reason for this

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

being the fact that the Plessey, Towcester test jig was late in arriving in Barbados and unfortunately does not make contact with the Magnavox plane. We have now sent off one completed frame to Winter Engineering and asked them to build us a test fixture; also we have returned the Plessey jig to Towcester with a frame and asked them to re-engineer the jig. All this, of course, has cost us six weeks."

Do you recall that?

A I don't recall this particular letter.

Q Well, no, but do you recall that particular problem?

A No, not about the test jig, no, I don't.

Q Did either Mr. Gretton or Mr. Parr ever consult with you on that subject?

A I do not recall it. Perhaps I should add here that this Magnavox contract -- if this is the military contract, and I think it is -- ISL had quoted against the specifications submitted to them by Magnavox. It was a most complex memory stack, extremely difficult to build, and I could well believe you would need special test jigs to see whether or not the finished product would function correctly. It was really beyond the capability of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that Barbados operation.

Q Yes. But do you recall that the test jig being engineered by Plessey Towcester was found to be defective, thus setting back the program?

A I don't recall that.

Q That doesn't refresh your recollection?

A No.

Q I show you what has been marked Plaintiff's Exhibit 81 and ask you if you can identify that?

A It is an interoffice memorandum from Mr. Parr to myself dated November 9.

Q Well, referring to the second page --

MR. MALONEY: We have no objection. Would you like to offer it in evidence first?

THE COURT: It will be received.

x x (Plaintiff's Exhibit 81 received in evidence.)

Q Referring to the Magnavox contract, it says, "We are presently manufacturing five prototype stacks for Magnavox. If these stacks are accepted, we stand to get orders valued at at least $3,000,000. We have already expended considerable finance on this job and we should complete the prototypes. Dave Gretton asked me to have our engineering department look at that design,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

specifications and advise him whether we thought the stack would satisfy the required shock and environmental conditions. He also advised me that he now has no one to spare to give the necessary attention to this project."

Now, when that report came to your attention what, if anything, did you do about getting Gretton the necessary engineering help that he apparently was calling for on this project?

A I don't know that he was actually calling for additional help on this.

Should we continue to read the memo? He says:

"I replied by Telex, stating that we consider the design sufficient to meet the requirements. In addition, I thinkwe should hire the Quality Control man and make him responsible for the project. To assist further, I recommend that we send John Kavolious with him for one to two weeks to install the necessary manufacturing engineering procedures and to insure that personnel are acquainted with the manufacturing requirements."

It looks as though he had already decided on the action to be taken.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q But do you recall that Mr. Keppel's, Plessey-ISL's chief engineer, had been especially in charge of the Magnavox project?

A He could have been. I don't recall.

Q He left in September, didn't he?

A Did he? I don't believe I knew the date when you asked me before. I am not too sure when he left.

Q Do you recall when Mr. Kavolious, who it was suggested be put on this project, came on board?

A No.

Q Well, it would be some time after September 9, the date of this memorandum?

A I don't know when Kavolious came. He said he suggested Kavolious go down to Barbados, but I don't remember when he joined the company.

Q I show you what has been marked Plaintiff's Exhibit 45, which purports to be a copy of a letter from Mr. Gretton to you under date of September 17, 1970. I ask you if you recall seeing that before?

A Yes, I do.

MR. McCONNELL: I offer it in evidence.

MR. MALONEY: No objection.

THE COURT: It is received.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

(Plaintiff's Exhibit 45 received in evidence.)

Q It is headed "Private and Confidential."

"Dear Mr. Clarke:

"I was disappointed when I heard that Mr. Albert would not be coming down to Barbados as I felt that his visit could have prepared the way for the various changes that we propose to make at the end of this month."

Do you recall what those changes were?

A No, I don't.

Q Did they have anything to do with discontinuing or terminating personnel?

A They may have. I don't recall.

Q "As I have stated previously, I feel that we have badly handled the personnel side of things since the takeover and now quite naturally our expatriate staff are becoming suspicious as to Plessey's true intentions."

THE COURT: What is the expatriate staff?

THE WITNESS: It is the American or British technicians who were living on the island, and they were there on special work permits granted by the government.

THE COURT: That is what you call ex-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

patriates?

THE WITNESS: Yes.

Q What did you understand Mr. Gretton to be referring to when he said, "Quite naturally our expatriate staff are becoming suspicious as to Plessey's true intentions"?

A I was somewhat surprised at that comment.

Q I show you Plaintiff's Exhibit 54 and ask you if you can identify that for the record?

A Yes.

Q It is a letter from Mr. Gretton to you and the date is December 16, 1970?

A Correct.

MR. McCONNELL: I offer Plaintiff's Exhibit 54 in evidence.

MR. MALONEY: No objection.

(Plaintiff's Exhibit 54 received in evidence.)

xx

Q Mr. Gretton is referring to the stacks for Hewlett-Packard which had been farmed out from Barbados over to Lisbon back in the Spring?

A Yes. I don't know which time of the year. It was during June-July.

Q He states: "I have been invoiced by Plessey

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Automatica Electrica Portuguesa for the sum of U.S. $9,377.43 covering Hewlett-Packard planes manufactured for ISL during June/July, 1970.

"These particular units type 10-082-13 and 10-083-13 were manufactured in Portugal on a time standard of 49.65 hours and 39.00 hours respectively. Here in Barbados we complete these identical units in 16.50 hours and 10.85 hours respectively. The times in Barbados have been verified and proven correct by Mr. Cuthbertson during his recent visit, and his visit report comments on the slack standards operating in Lisbon.

"I therefore suggest that some negotiation must be entered into an attempt to reduce the invoice cost to ISL (invoice Nos. 5615 to 5625 and MO/5671 to 5674.) I would be grateful for your advice on this question."

Does that refresh your recollection that Barbados times to cover this work were less than it took at your plant in Lisbon?

A This letter would tend to indicate that. I must admit I am a little surprised if it is so.

Q Does that also refresh your recollection that Mr. Cuthbertson so found on his visit to the Barbados plant?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't know whether he did or not.

THE COURT: Who is Cuthbertson?

THE WITNESS: Cuthbertson was the person who was sent down to Barbados; he was a time study engineer.

THE COURT: For Plessey?

THE WITNESS: For Plessey, yes, sir. He went down there the middle of November for about eight weeks.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

eoh1 Clarke-direct

T3 MR. McCONNELL: Your Honor, I also offer at the same time, because it relates to the exhibit we have just been talking about, Mr. Kovar's letter, under date of April 23, 1970, to Mr. Crocker. That is Plaintiff's Exhibit 53.

THE COURT: Exhibit what?

MR. McCONNELL: 53. I am not going to ask the witness any questions related to the arrangements that were worked out to farm out this work to Lisbon.

MR. MALONEY: No objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 53 received in evidence.)

Q I show you what has been marked Plaintiff's Exhibit 43 and ask you if you can identify that.

A I can read what the heading is.

THE COURT: Have you ever seen this before?

THE WITNESS: I can't recall seeing it before, sir. I don't recognize the writing. I don't know who prepared it.

Q Do you know what the Norman Crocker report referred to therein is?

A It says "Based on Norman Crocker report." There is no date as to which report.

Q Would that be Crocker's February 25th report?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A It may be. This is a '70-'71 budget, though. I would have thought it would have been a report nearer b2 the date of the '70-'71 budget. I have no idea.

Q You had nothing to do with the preparation of this, I take it?

A Not that I can recall.

MR. McCONNELL: I offer 43 in evidence.

MR. MALONEY: I would object to it at this time, your Honor, because I haven't been able to find out where it came from myself.

THE COURT: Let's hold it for identification then.

MR. McCONNELL: It did come from your files?

MR. MALONEY: I am sure it came from our files.

MR. McCONNELL: That is all, your Honor.

THE COURT: Why don't we take a five-minute recess. We will have a short recess.

(Recess.)

(In open court; jury present.)

THE COURT: All right, you may proceed.

CROSS EXAMINATION

BY MR. MALONEY:

Q Mr. Clarke, do you know who Mr. Norstedt was?

A Yes, Mr. Norstedt was in charge of manufacture at ISL.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Keep your voice up a little.

A Mr. Norstedt was in charge of manufacture at ISL before we took over.

Q Do you recall when you first learned that he was leaving ISL?

A I believe it was at the time of the visit that Norman Crocker and Peter Hewitt and I made, the first visit that we made in February.

Q Who informed you that Mr. Norstedt would be leaving?

A Mr. Kovar.

Q Did he tell you the date by which Mr. Norstedt planned to leave?

A I believe it was the end of February.

Q Did you discuss with Mr. Kovar whether or not he had someone to replace Mr. Norstedt with as the head of the manufacturing operation?

A It was at that time that it was suggested that Peter Hewitt should be the replacement providing that Peter Hewitt would be prepared to go to Barbados.

Q Did you discuss with Mr. Kovar who Mr. Hewitt was?

A Yes. Mr. Hewitt was at Barbados at that time.

Q He was along on the trip with you and Mr. Crocker?

A Yes.

Q So, Mr. Kovar had an opportunity to meet with him?

A He met Mr. Hewitt.

Q And interviewed him at that time?

A Yes.

Q Did Mr. Kovar indicate to you that he had any other candidates for the position if Mr. Hewitt was unwilling to accept it?

A Not to my recollection.

Q Did Mr. Kovar express any objection to Mr. Hewitt coming from Plessey's Lisbon plant and replacing Mr. Norstedt?

A No. In fact, from memory, I believe he was quite pleased that we could have someone with so much engineering background and ability.

Q Who was Mr. Hewitt again?

A Mr. Hewitt was the manager of the Portugese Plessey memory operation.

Q Was that operation larger or smaller than the operation in Barbados?

A Much larger.

Q How did it come about that it became necessary to replace Mr. Gretton with Mr. Hewitt?

A Mr. Hewitt --

MR. McCONNELL: You have that wrong, I think.

THE COURT: I think you have it in reverse. How

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

did it come that Mr. Gretton came to replace Mr. Hewitt, I think that is what he wants to know.

Q How did that come about?

A Mr. Hewitt, his wife had joined him in Barbados, she was not too happy living in Barbados after Portugal and Mr. Hewitt was not pleased with the way things were progressing in the Barbados facility. He found in his opinion the group that was still there, and this was the old team that had been recruited by Mr. Kovar, there was loyalty to Mr. Kovar and Gretton seemed to be having difficulties in introducing some of his own thoughts --

Q Hewitt.

A Hewitt, rather, on manufacture.

I remember one instance in particular which was mentioned to us and this was at the visit after the spring joint computer conference was that one of the small areas Mr. Hewitt wished to clean up, he thought the employees would work far better in clean surroundings, and all they needed was to purchase paint and they were going to paint this particular room themselves, but Mr. Kovar said he didn't wish to have the outlay charged to him and he didn't wish to purchase the paint.

There were small niggling things such as this that in Hewitt's opinion were very trivial, but the results

could be very helpful to increasing production.

Is it correct that it was at Mr. Hewitt's instance that he left Barbados and not because you and Mr. Crocker wished him to leave Barbados?

A No, we were very sorry that he decided that he wished to return to Portugal.

Q When Mr. Hewitt had indicated to you and Mr. Crocker that he wished to leave, what did you do?

A I asked Mr. Crocker did he have anyone else that could replace Mr. Hewitt and he said, yes, Mr. Gretton providing Mr. Gretton would be prepared to move to Barbados.

In the meantime Mr. Gretton had taken over the operation in Portugal, but he had been second in charge to Mr. Hewitt in Portugal.

Q So, when Mr. Hewitt left Portugal, Mr. Gretton became the head of Plessey's facility in Portugal?

A Correct.

Q Did you then interview Mr. Gretton and ask him if he would be willing to go to Barbados?

A Yes, a little time later I met with Mr. Gretton for the first time in London.

Q Was that in connection with your trip there on or about May 20th?

A Yes, it was when the report was issued. Yes; that

is right, May 20th.

Q And Mr. Gretton agreed to the transfer to Barbados?

A Yes.

Q I believe you referred in your direct testimony to Plessey's attempt to set up an inventory control system?

A Yes.

Q Would you explain that to his Honor and the jury?

A Yes. Mr. Hewitt found when he arrived at Barbados that the control of inventory was extremely loose. There were few records, in fact, hardly any accurate records at all that they had been using to maintain production. You have to bear in mind ISL was without finances and they had used some of the customer furnished materials not to produce items for the particular customer who had furnished the material, but to manufacture other people's orders, just to try and keep the facility running.

Consequently, it was utter chaos in the inventory. No inventory control. In fact, we didn't even know what inventory we had and this is why Peter Hewitt thought it was essential, and this is one of the first functions that he tried to establish, was strict inventory control. He set up this complete card system. It was a simple operation that you had a card control in particular bins

in which you had the various items of inventory. The idea being that you had minimum levels and when you withdrew inventory and reached the minimum quantity, was the time that should have signaled off the time to reorder and replenish stock. This was in his order of priority, I b3 believe, item number 1.

Q You testified that Mr. Tito was hired by Plessey to be responsible for purchasing?

A Correct.

Q Where was he located geographically in the first instance?

A He was located in Farmingdale. He never moved from Farmingdale. That was his location all the time he was employed by Plessey.

Q In connection with his attempting to purchase materials, he would act in response to requests from the plant in Barbados to buy a particular kind of material, a particular quantity of that material, is that correct?

A Yes, correct. He would have a drawing or a specification sheet.

Q I believe you testified on your direct testimony that Tito was experiencing problems because they weren't giving him sufficient advance notice of what materials would be needed. Could you amplify on that problem for his

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Honor and the jury?

A Yes. It became obvious after a time that although Hewitt had with the best of intentions tried to standardize an inventory control procedure that it was not functioning correctly and items were being taken out of inventory and not recorded. Consequently, when a new job was placed on the factory floor, although the card may show that we had sufficient inventory to manufacture that particular job, you would find that the items were not in inventory when you went to draw them from stores to start manufacture.

This happened on a number of instances and also the incorrect counts. It seemed that the people that were handling the controls were not too accurate arithmetically and not only was there not inventory on occasions, we had incorrect figures on cards which was just as catastrophic so that Pat Tito, when he received a requisition, probably on the requisition they would say ASP, as soon as possible they needed it. In all probability the supplier would have a minimum of six, ten, twelve or fourteen weeks lead time for that particular item and this created delays. Naturally, it was not delays on the part of the supplier, it was just the normal lead time, but we were not allowing the supplier the normal lead time to produce and ship to Barbados the particular items that we wished to purchase.

eoh10 Clarke-cross

Q I believe you were also asked questions on your direct examination concerning shipments. Who at Plessey Electronics was responsible for the actual shipment of materials down to Barbados after Mr. Tito had arranged for the purchase of the materials?

A From the end of July there was a Mr. Jendron, the traffic manager. He was responsible for the actual shipments with the aid of the broker, Barnet- International.

Prior to the end of July the shipments were still being handled by Scientific Trading, which was the operation that was set up by International Scientific, the old company, and they used the freight brokers, Freight Forwarders International.

Q Is Mr. Jendron still employed by you, Mr. Clarke?

A Yes, he is.

Q Did you ask Mr. Jendron to prepare some form of schedule showing the number of shipments that went down to Barbados during the measuring year?

A Yes, I did.

Q Do you have a copy of that schedule with you?

A Yes.

xx (Defendant's Exhibit DS marked for identification.)

MR. McCONNELL: Are you going to examine on this document?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

eohll Clarke-cross

MR. MALONEY: I am going to offer it in evidence.

MR. McCONNELL: Your Honor, I have never seen this document. It is not a listed document. There has been no foundation laid.

THE COURT: He didn't prepare it.

MR. MALONEY: I will ask Mr. Clarke.

Q Mr. Clarke, I show you Defendant's Exhibit DS for identification and I ask if you can identify that document.

A Yes, I can.

Q Would you tell the Judge and the jury how that document was prepared?

A This document was prepared within the last three weeks. It was just for my own information for this inquiry.

THE COURT: Who prepared it?

THE WITNESS: My shipping manager prepared it, Mr. Jendron, who was responsible for the shipments.

THE COURT:You asked him to prepare this for you?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Do you know what steps he took in order to prepare Defendant's Exhibit DS for identification?

A Yes, he went back through invoices that we have at the office and shipping documents.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did he list each of those on the document which is before you?

THE COURT: How does he know whether he listed each one. That is what you asked him to do, is that right?

THE WITNESS: That is right. He showed the invoice number and an airway bill number.

THE COURT: You asked him to do this?

THE WITNESS: Exactly, just to get some idea as to the frequency of shipments from the date that we took over the shipping on July 30th.

MR. MALONEY: I offer it in evidence, your Honor. I can bring Mr. Jendron and each of the invoices. I am trying to keep this short. I realize we have all been here a long time. I will make the invoices available to Mr. McConnell in the evening.

THE COURT: I will hold it. I won't receive it in evidence now, but I will give him a chance to look at this and see what it is based on and you can make an application later.

MR. MALONEY: All right.

Q Mr. Clarke, I believe you also testified during your direct testimony that some time in January or February, 1971, administrative control of ISL was transferred from you

eoh13 Clarke-cross

to Mr. Crocker. Do you recall the circumstances which brought about that transfer of control from yourself to Mr. Crocker?

A Yes. This was a directive from the Plessey Company. The Plessey Company was reorganizing certain of its production units internationally. There was environmental systems, which handled current recording meters and oceanographic equipment. This was to be controlled from England on a worldwide basis. Previously there had been a number of agents and outfits throughout the world.

The other was our aircraft mechanical and electrical. This again was now being taken over on a worldwide basis. We had one company already in North America, Plessey Airborne, that had then to report to the Central British organization rather than be an independent American operation.

At the same time the three organizations were environmental systems, the aircraft side and also the memory side it was decided that it was beneficial for Plessey to have one worldwide memory program rather than to split it into different geographical areas.

Q Up to that time had responsibility for particular divisions been assigned on the basis of geographic location of the division?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, it rested in the regional director of the particular region in which the operation was geographically located.

Q Under that geographic type of organization, in what region did Barbados fall?

A In North America headed up Mr. Sinsheimer.

Q That was the reason originally the operation was under your control because of the geographic type of organization?

b4 A Correct.

Q Under the reorganization by which the worldwide businesses were all reporting directly to England, is that the reason to your knowledge why administrative control was transferred from yourself to Mr. Crocker?

A Yes, that was the sole reason.

Q In connection with that transfer of control, did Mr. Sinsheimer or anyone else in the Plessey organization ever indicate to you in any way that that transfer was based on anything other than that reorganization of the company?

A No.

Q To your knowledge did that have any effect on the day to day operations of the ISL facility?

A No, because Mr. Crocker had been involved almost

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to the same extent as I had from the outset.

Q Mr. Crocker was fully familiar with the operation?

A Exactly.

Q And he had been continually visiting Barbados as you have testified?

A Yes.

Q I take it the net effect of that was that --

THE COURT: Wait a minute. Don't start with the net effect of it. The lawyers have the greatest tendency of substituting your own judgment.

MR. MALONEY: I withdraw the question, your Honor.

Q Following the reorganization, to whom did Mr. Gretton report?

A To Mr. Crocker.

Q And to whom did Mr. Parr report?

A Mr. Crocker.

Q I believe on your direct testimony Mr. McConnell asked you about a series of conversations between yourself and Mr. Crocker and Mr. Kovar ranging over the joint computer show in Atlantic City and then on the airplane down to Barbados and the discussions continued in Barbados?

A Yes.

Q Could you just again give us your recollection of the substance of those continuing series of conversations

in early May, 1970?

A Yes. I know that Mr. Crocker had already received word from Mr. Hewitt, that was prior to Mr. Crocker coming to the spring joint computer conference, that Mr. Hewitt was not satisfied with his task in Barbados; that there were problems in running the operation. He felt that he was restricted in doing what he felt was the right thing to do.

This I only learned from Mr. Crocker at the spring joint computer conference. I believe there had been telephone conversations and also letters between Mr. Hewitt and Mr. Crocker on this. I knew nothing of it until I arrived at the spring joint computer conference.

We did discuss with Mr. Kovar as to why there should be any problems in our taking the necessary action or action that we considered necessary to make Barbados a more viable operation and our intention had been that it should become a core wiring facility.

Q Mr. Kovar resisted the changes which Mr. Hewitt, Mr. Crocker and yourself were suggesting; is that correct?

A I think the resistance became more pronounced when we actually arrived in Barbados rather than these discussions on the aircraft. The discussions on the aircraft, for one thing, we were not all sitting together and it is

difficult to have discussions on an aircraft. We were in Antigua and there was some delay of the other aircraft from Antigua through to Barbados and, as I recall, I think everyone had had a little to drink and that may have loosened people's tongues. We had been spending an awful lot of time waiting for aircraft and it was very, very hot. I think perhaps things were said that were not even meant, I don't know.

Q In any event, when you got to Barbados and everyone had a night's sleep, did these discussions continue at the offices of ISL?

A At that time Mr. Hewitt did notify me that he wished to goback to Portugal. That was the first official notification I had had of what Mr. Crocker had mentioned to me at the spring joint computer conference. Mr. Hewitt asked to see Mr. Crocker privately, which he did.

You have to bear in mind that I had only once met Mr. Hewitt before whereas Mr. Hewitt had worked for a number of years for Mr. Crocker.

Q With respect to the changes which Mr. Hewitt, yourself and Mr. Crocker were proposing, do you recall which specific ones Mr. Kovar objected to as being improper under the contract?

A I can't recall all of the queries that Mr. Hewitt

raised. I know the one that concerned me the most was this revised floor layout that I felt the sooner we could accomplish this --

THE COURT: I am not sure that was the question. I think you were asked as to the points that Mr. Kovar objected to and I think you mentioned Mr. Hewitt.

MR. MALONEY: I think he indicated that Mr. Kovar was objecting to the revised floor plan by Hewitt.

THE WITNESS: The floor plan was what Hewitt had suggested.

THE COURT: He objected to the change in the floor plan?

THE WITNESS: Yes. This affected the wire looms that we were producing because they were taking up a fairly large corner area of one of the floors and this would interfere with the plan that Mr. Hewitt had.

Q Mr. Clarke, I show you a copy of Plaintiff's Exhibit 20 in evidence, which is your memo of May 25, 1970, concerning the meetings a few days earlier in England and ask you if you recall whether or not Mr. Sinsheimer had given you any instructions with respect to the discussions which you had in England and which are recorded in that memorandum.

A He indicated that he was not too happy with the

progress down in Barbados and that could we come up with suggestions as to how to improve the situation.

Q Did Mr. Sinsheimer also further instruct you to be ready with a group of people who could run the operation in the event that he reached the decision that he was going to assume management control under the contract?

A He said he would like an outline of some plan that could be put into effect if he decided to adopt that route.

MR. MALONEY: Thank you.

Q Mr. Clarke, I show you Plaintiff's Exhibit 95 in evidence and I call your attention to -- that is your memorandum of September 9, 1970, which was circulated to Sinsheimer, Parr and Albert, and referring to the first page there is a discussion of test equipment. Now, without reading the entire report, would you explain to his Honor and to the jury what the situation was with respect to testing equipment in Barbados?

A The Barbados facility did not really have adequate modern test equipment. This became very apparent when Dave Gretton took over, although Hewitt was well aware of the problems with the rather antiquated test equipment that the plant then had.

I believe in one of his reports he mentions that

this is his next order of priority, to pay attention to the test equipment.

Dave Gretton, his abilities were perhaps more in scope than Mr. Hewitt's when it comes to test equipment because he was a more specializing engineer in test equipment and I know that when he arrived in Barbados he said that there was insufficient test equipment for the kind of product runs that the company was forecasting. We had insufficient testing capacity.

Q Would the adequacy or the sufficiency of the test equipment bear some relationship to the quality of the product that was produced and shipped to the customer?

A Indeed. We did not have sufficient test equipment to carry out all of the tests thatwere necessary to insure that those memory stacks were 100 per cent perfect when they were shipped.

Q Would that have some effect on the number of products that were returned by the customer as defective?

A Yes, it would.

Q Mr. Clarke, I show you Plaintiff's Exhibit 45 in evidence, which is Mr. Gretton's letter to you, dated September 17, 1970, concerning the personnel problems with the expatriate staff and I ask you to explain to his Honor and to the jury what those problems were.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A As I recall, most of these people when they were hired by Mr. Kovar had employment agreements. I believe they varied. I don't think they were all with the same basic clauses and after Plessey had taken over the employees, the expatriate employees, asked if they could receive a Plessey contract which would replace the old ISL contract.

This was at the time -- this letter is dated September 17th -- when in North America we had made the recent acquisition of quite a large conglomerate, alloys, and Mr. Sinsheimer was in the process, and Mr. Albert was working on this for him, of coming up with employment contracts and deciding whether or not we would, in fact, offer employment contracts throughout the whole of the North American operation. There was this pension scheme that was under discussion and Milton Albert was in the process of contacting various insurance companies to try and come up with a reasonable pension scheme.

Mr. Sinsheimer intended to delay any decisions on this because in September we were in a recession. Certainly in the alloys business, which was more sophisticated integrated circuit type of manufacture, and he didn't feel that with the fall off in sales and the resulting fall off in profits that the company could take on the added expense of the pension schemes and Milton Albert did tend not to

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

move as quickly as everyone would have wished. That was even in the North American operation because there were restrictions in view of the economic conditions at that time.

Q What did you understand to be the dissatisfaction of the expatriate staff upon which Mr. Gretton was commenting in that letter?

A They just wanted a Plessey contract to take the place of the old contracts that they had with International Scientific Limited.

Q They were becoming unhappy because --

THE COURT: Whoa, don't tell him.

A There was one other thing I should answer and that is some of the people in Barbados were paid not only in Barbados but also paid through an account, this was the old ISL employment arrangement, paid through an account in America and I know Mr. Sinsheimer was most concerned as to whether or not we would be contravening some of the IRS regulations in continuing that method of payment. That was also delaying employment contracts.

Mr. Albert had been expressly instructed to find out the legalities of continuing that kind of arrangement.

Q I believe that is the letter from which Mr.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

McConnell read which contains a statement that the expatriate staff were becoming suspicious of Plessey's intent. What did you understand Mr. Gretton to be referring to by that?

A That is why I said I was somewhat surprised at that comment because I felt Mr. Gretton was probably aware of the problems as they existed.

MR. MALONEY: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. Clarke, when management control was handed over to English Plessey and Mr. Crocker, were you still in the measuring year?

A Yes, February 1st was the date.

Q Was there any discussion as to whether or not you could do that under the contract?

A If there was, it was not with myself.

Q Now, isn't it a fact that with reference to test equipment that Kovar had requested additional test equipment from Plessey as early as March?

A He may have. I can't recall it, but I imagine he would because that was one of the great weaknesses in the ISL operation, the test equipment.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q The problem of not being able to get these stacks past test was that Plessey had not delivered the promised testers until late in the year, is that not the fact?

A Testers are not a shelf item. Testers have to be specifically built.

Q You had one at Portugal, a Mark 6, didn't you?

A We transferred that one.

Q Yes, but not until November, although everybody had been crying for itsince March.

THE COURT: No, no.

MR. McCONNELL: Excuse me, asking for it.

MR. MALONEY: Your Honor, I think Mr. McConnell ought to give Mr. Clarke an opportunity to --

THE COURT: Both of you fellows have this tendency of sort of going off on your own notions every once in a while. Try to confine the questions to the witness, please.

Q Do you know of any reports, written reports, prepared by Mr. Hewitt while he was down in Barbados other than his monthly reports to you and Crocker?

A Not that I can recall.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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Q I show you what is in evidence as Plaintiff's Exhibit 24. That is Mr. Kovar's letter to you under date of June 2, 1970, the May report?

A Yes.

Q It states: "The month of May showed continued improvement. April new shipments exceeded March new shipments by 17 per cent; May exceeded April by 38 per cent. Net sales showed an increase of 56 per cent April over March, and May was 41 per cent over April."

Is that the type of lack of progress or evidence of turn-around that you were referring to in your testimony?

A Yes, but you have to realize that the reason the previous months were so poor is that ISL did not supplier's invoices; they were not paying them. It is only when Plessey started to pay the invoices that the equipment started to flow.

Q That is right. They were starting from scratch?

THE COURT: Don't start an argument.

Q Well, the ISL facility had been virtually shut down?

A Correct.

Q And everybody knew that the first two months,

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

at least, would be loss months because of the supply problem? Wasn't that so?

A They certainly would be poor months, yes.

Q And the same whether there is reference to IBM just cancelling $25,000 per month order; production cutback was the reason?

A I think that is an indication that the softness industry was being felt.

THE COURT: What did you understand the last sentence of Mr. Kovar's letter to be?

A Yes, Black Power was becoming quite a problem on the island, sir. There were certain sabotage in the factories; we had it for a period when stacks were destroyed. We could never really find the people who did it. But a stack is an extremely sensitive piece of equipment; it is about the size of this telephone (indicating), and somebody could just push a screwdriver through it and just wreck it. It was sabotage in the factories and we were beginning to feel it.

THE COURT: The government had stopped in to stop Black Power?

THE WITNESS: The government was trying to help; it was already arriving in Trinidad, and Ed Barrow, who was the Prime Minister, was very intent in trying to avoid it

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

from growing into any large proportions in Barbados, and he has been extremely successful in keeping it down.

Q I show you what has been marked Plaintiff's Exhibit 73 and ask you if you can identify that document?

A I have seen the document before, but much later than the date when it was actually issued. I was not on the actual circulation.

Q When was this originally issued?

A I don't know. I am looking for a date on it. I believe it was prepared for the main board of the Plessey Company.

Q Well, it shows on the cover page "World Memories 1970-1975."

Would ithave been prepared sometime in 1970?

A I have no idea.

MR. McCONNELL: I offer Plaintiff's Exhibit 73 in evidence.

MR. MALONEY: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibit 73 received in evidence.)

Q Would you refer to the page headed "Boston"?

A Yes.

Q Have you got it?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q It says: "This facility is being established as a marketing, design,prototype servicing unit for the United States market; production being carried out in Barbados."

Does that refresh your recollection or help you in any way as to the date of this?

A No, it does not, Mr. McConnell. When I first saw this there were illustrations in the brochure that I saw, and the illustrations for the Boston facility was not even the Boston facility that we had. I was not involved at all in the production of this.

Q There is a picture page? Is that what you are referring to? World 1974 Output?

A No, the Boston page itself has an empty box in it. When I saw this in bound form there was a photograph of a building there, but it was not the building that we occupied in Boston. Crocker must have prepared this.

Q Would that lead you to believe that this had been prepared before you actually physically moved into the Boston facility?

A Could have been, yes, probably was.

MR. McCONNELL: That is all.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

RECROSS EXAMINATION

BY MR. MALONEY:

Q Would you explain to his Honor and the jury what the problem is with obtaining new test equipment?

A Yes, the test equipment that Mr. McConnell referred to from Portugal, the Mark VI equipment is one that Plessey manufactures itself. It is very specialized electronics equipment that we used to purchase from various suppliers and incorporate all of the meters and test equipment into large test boards. And these probably refer to the delivery of the particular electronic components and the building of it. It would take two to three months to actually build one.

Q In connection with requests of ISL at any time during the measuring year did to your knowledge Plessey use its best efforts to obtain new and additional test equipment as quickly as possible?

A Yes, we transferred to Mark VI test units. To the best of my knowledge, they were released from Portugal as soon as Portugal could let them go.

Q Were they actually being used in Portugal?

A Yes.

MR. MALONEY: Thank you.

THE COURT: Any other questions?

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